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**The Politics of Supporting Diversity in Higher Education:
Texas Legislature's Enactment of House Bill 588**

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The Politics of Supporting Diversity in Higher Education:

Texas Legislature's Enactment of House Bill 588

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Dedication

For my parents, Esther and Pedro Munoz, who inspired me, and for my brothers and sisters, who supported me in this effort.

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**The Politics of Supporting Diversity in Higher Education:
Texas Legislature's Enactment of House Bill 588**

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House Bill 588 was enacted by the 75th Legislature in 1997. This bill was a response to the *Hopwood v. State of Texas*, 78 F.3d 932, 962 (5th Cir.), *cert. denied*, 518 U.S. 1033 (1996) ruling that banned the use of affirmative action policies at The University of Texas School of Law. It was an alternative to the traditional use of race in university admissions decisions and guarantees automatic admission to the top 10 percent of each high school graduating class in the state.

This study focused on the deliberations and actions of 75th Legislature in Texas. It was guided by Meranto's (1967) *input-output* model designed to show how environmental factors enter a legislative system as inputs, which are then altered within

the system to produce a new output.

The study addressed four questions: (1) How did members of the Texas Legislature perceive the *Hopwood* ruling?; (2) What influence did the implementation of the *Hopwood* ruling have on the policymaking process of the 75th Legislative Session?; (3) What conditions within the Texas Legislature favored the final construction of House Bill 588, and what were the final provisions of the legislative policy addressing minority representation in higher education?; and (4) What key strategies did the author of House Bill 588 implement to facilitate the development and passage of the bill?

Findings of the study include: (a) minority legislators anticipated that the *Hopwood* ruling would have an adverse affect on minority representation in higher education and sought a legislative response; (b) House Bill 588 was enacted in response to the ruling; (c) three conditions within the system were instrumental in the passage of this bill; and (d) five key strategic maneuvers further secured the bill's success.

The study provides other states and policy analysts factors that can be used in place of race in admissions criteria. The study also provides insight into how support was built to enact legislation dealing with the issue of minority under-representation in higher education.

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CHAPTER I

INTRODUCTION

Hopwood v. State of Texas, 78 F.3d 932, 962 (5th Cir.), *cert. denied*, 518 U.S. 1033 (1996) banned the use of affirmative action policies at The University of Texas at Austin School of Law.¹ In response, former Texas Attorney General Dan Morales (1996a, 1996b) issued guidelines prohibiting the consideration of race in all state university admissions, financial aid and student recruitment and retention efforts. Concerned that minority enrollment in higher education would suffer, the Texas Legislature assumed an unprecedented role in admissions policies. In 1997, the 75th Legislature responded to the Morales ruling's anticipated effects by enacting House Bill 588, which established uniform admissions and reporting procedures for the State's institutions of higher education. This legislation was intended to ensure the diversity of student populations at State institutions (House Higher Education Committee Report, 1997).

This study analyzed the development and enactment of House Bill 588. It focused on: (1) determining the influence of various societal factors, primarily the *Hopwood* ruling and Morales' interpretation, on the policymaking process of the 75th Legislature; (2) reviewing the conditions within the 75th Legislature that favored the final construction of House Bill 588; (3) reviewing the final provisions of the bill; and (4)

¹ A remedy for past cases of discrimination with present effects was permitted. *See Hopwood*, 78 F.3d at 962. However, Morales (1996b) cautioned that "it is almost impossible to prove present effects of past discrimination" (p. 1).

identifying the strategies utilized by the key legislative stakeholders to ensure the successful enactment of the bill.

Statement of the Problem

Historically, the Texas Legislature left decisions regarding admissions policies to individual colleges and universities. However, in light of *Hopwood*, Texas colleges and universities began to restructure their admissions policies, eliminating race as a factor (Ackerman, 1996). This generated concern about the effect these admissions changes would have on minority representation in higher education. Mexican-American Senator Gonzalo Barrientos and other minority lawmakers were concerned that “Texas’ top minority students will be lured to states offering scholarships that consider a student’s race” (Brooks, 1997b, p. B6) since *Hopwood* applied only to the Fifth Circuit Court’s jurisdiction, which includes Texas, Louisiana, and Mississippi (Morales, 1996a). Mexican-American Representative Irma Rangel was concerned that the ruling would not only affect minority enrollment at professional schools, specifically The University of Texas School of Law, but also at all universities in the State. In an interview she said, “It was going to affect the undergraduate schools,” as well.

When The University of Texas at Austin reported the effects of the *Hopwood* ruling, its statistics on the first post-*Hopwood* freshman class showed that:

37 percent of African-American high school seniors who applied to UT-Austin for regular admission had been accepted, down from 54 percent the last year. The admission rate for Latino seniors also fell, while the admission rate for white and

Asian applicants rose. The number of applications from all groups also fell, but the decrease was proportionately greatest among black and Latino applicants.

(Lubman, 1997, p. A1)

At Texas A&M University, applications in 1997 from African-American students fell by 10 percent and from Hispanics by 7 percent (Lum, 1997). Texas A&M University President Ray Bowen said, “There’s no question that Hopwood is upsetting people....People are thinking they shouldn’t bother to apply here when Harvard and everyone else is making them better offers” (Lum, 1997, pp. A1, A8). Michael Sharlot, dean of The University of Texas School of Law where the *Hopwood* case originated said, “There’s no chance we can go on competing successfully in drawing qualified minorities if things continue this way” (Lum, 1997, pp. A1, A8).

Some campus administrators began calling the drop in minority applications and admission rates “the Hopwood effect” (Lubman, 1997, p. A1). Others, like Bruce Walker, director of admissions at The University of Texas viewed the drop as somewhat insignificant. According to Walker, “the race-neutral policies resulted in comparable numbers of minorities being offered admission, especially after the drop in applicants” (“350 Fewer,” 1997, p. B2).

A University of Texas law school graduate who commented on the law school’s previous use of separate committees to review applications based on ethnicity said, “We like the notion of equal opportunity, but equal protection applies to everyone....That’s not a bad thing. That’s not a novel thing, either” (Lum, 1997, pp. A1, A8). Then-director of the Center for Mexican American Studies at The University of Texas at Austin, David

Montejano (1997), noted that access and opportunity did not always apply to everyone.

He wrote:

The law school [University of Texas at Austin] was officially “integrated” when the U.S. Supreme Court ordered that it accept Heman Sweatt in 1950, but it would take twenty more years before the school went beyond token integration. The undergraduate student body remained virtually White until President Lyndon Baines Johnson began to push for civil rights in 1964. (p. 135)

Montejano (1997) stated that until 1975, when the University first began compiling statistics on minority enrollment, African-Americans comprised less than 2 percent of the student population. He also pointed out that Hispanic² students, which included students from Latin America and Spain, were only 5 percent of students. A major newspaper in the State reported similar findings; see Table 1 (Roser & Phillips, 1996, p. A1). As the table indicates, after 1975 there were gradual gains in minority enrollment at The University of Texas at Austin.

² The term “Hispanic” will be used hereafter when referring to general student populations of Mexican-American and Latin American descent. However, the term “Mexican-American” will be used when identifying an individual of this specific heritage.

Table 1

Diversity at University of Texas

Before 1975, the University of Texas did not track enrollment by ethnic group for fear of appearing to discriminate.

	1975	1979	1983	1987	1991	1995
White	80.3%	84.7%	79.2%	75.6%	69.8%	65.6%
American Indian	.3	.1	.2	.2	.3	.4
African American	1.7	2.5	3.0	3.4	3.6	4.0
Asian American	.5	1.0	2.3	4.8	6.8	9.9
Hispanic	5.6	7.3	8.5	9.4	11.2	12.7
Foreign	3.8	4.3	6.8	6.5	8.3	7.5
Other	1.6	.0	.0	n/a	n/a	n/a
Unknown	6.4	.0	.0	n/a	n/a	n/a

UT law school

	1975	1979	1983	1987	1991	1995
White	83.0%	84.6%	78.5%	82.3%	78.1%	74.8%
American Indian	.4	.1	.2	.2	.5	.3
African American	2.0	4.3	7.7	3.9	6.5	6.6
Asian American	.2	10.4	1.0	1.1	2.4	5.8
Hispanic	5.2	.3	12.0	11.6	11.3	11.7
Foreign	.6	.0	.6	1.	1.1	.9
Other	2.6	.0	.0	n/a	n/a	n/a
Unknown	60		.0	n/a	n/a	n/a

Source: University of Texas Institutional Studies

Note. From "Texas to fight affirmative action ruling," by M. A. Roser & J. Phillips, March 27, 1996, *Austin American-Statesman*, p. A1.

After *Hopwood*, the reported decline in minority applications and admissions to the two major institutions of Texas served as an indicator that past gains in minority admissions in higher education—resulting from judicial rulings—were at risk. Prior to *Hopwood*, the *Regents of the University of California v. Bakke*, 483 U.S. 265 (1978) decision had “been used by universities and professional schools across the country for...two decades in designing programs to increase black and Hispanic enrollment” (Stutz, 1996b, pp. A1, A20). Any change was of particular concern to minority legislators, especially because a decline in minority applications was in direct contrast to the rising number of minority students in Texas and suggested that minority underrepresentation in college populations would become a greater problem in the future. At

the time of the *Hopwood* ruling, minority students were already the main source of new students in Texas. “Ethnic minorities constitute[d] 53.6 percent of all students enrolled in elementary and secondary schools in 1995-96 in Texas” (Advisory Committee on Criteria for Diversity, 1997, p. II-3).

Former University of Texas at Austin president Dr. Robert M. Berdahl (1996) also expressed his concern over demographic trends. In a letter in which he shared (with state legislators) a copy of an editorial that he wrote for The University of Texas at Austin newspaper, *The Daily Texan*, he stated:

Demographers reinforce the notion that we must educate more young people to fill leadership positions in minority communities. The population of the United States is changing dramatically. By the year 2020 there will be no majority population in America. Growth in the next 25 years will produce new levels of demands for teachers, doctors, reporters—people in all walks of life—with strong affinities to the minority communities they serve....A diverse student body has come to be thought of as an educational resource as important as the quality of the library, the faculty, laboratories, or any other key asset of a university. We have come a long way from the days when governors stood in the doorways blocking access to education....We ought not retreat from this progress. (pp. 2-6)

When the 75th legislative session convened, key minority legislators sought a legislative response to curtail the anticipated adverse effects of the *Hopwood* ruling. This study shows that the policymaking environment of 1997 responded with a legislative solution: House Bill 588. Unexpectedly, it turned out to be race-neutral. The

significance of this outcome is noteworthy for several reasons. First, a new political climate, primarily controlled by Republicans, managed to change admissions policies with the help of the *Hopwood* ruling from race-based to race-neutral. Second, the change occurred in only five months—one session. Third, the Texas Legislature assumed an unprecedented role of becoming involved in the details of admissions policies in higher education.

Purpose of the Study

This case study examined the politics surrounding the development and enactment of House Bill 588. Specifically it used the model of political innovation developed by Philip Meranto (1967) to analyze the environmental (societal) and legislative conditions that contributed to the drafting, support, and passage of House Bill 588. Meranto combined elements of the systems approach with a legislative model in his effort to understand how major legislative innovation occurs in a political system. He noted that the systems approach allows for the study of the authoritative decisions, which result from the interrelationship between political actors and institutions. He added that the systems approach provides descriptions of the various parts of the political system, it differentiates political interactions from other type of social interactions, and allows for consideration of environmental factors, which in an “open” political system can have a crucial influence on the interactions within the system.

Meranto’s (1967) model, which addressed the political system at the societal level, was adjusted for this study to fit a political subsystem—the Texas Legislature.

Meranto's conceptual framework was also modified. This was done to accommodate the distinctiveness of this study, which was to identify the environmental (societal) and legislative factors that affected the development and enactment of House Bill 588 during the 75th Legislature.

This study provides insight into how the Texas Legislature responded to a public policy issue it had not addressed in the past. It also shows how key legislative stakeholders redefined the use of race in college admissions to ensure equitable access to higher education for minority students.

Research Questions

The following questions guided the research of this study:

- RQ #1: How did members of the Texas Legislature perceive the *Hopwood* ruling?
- RQ #2: What influence did the implementation of the *Hopwood* ruling have on the policymaking process of the 75th Legislative Session?
- RQ #3: What conditions within the Texas Legislature favored the final construction of House Bill 588, and what were the final provisions of the legislative policy addressing minority representation in higher education?
- RQ #4: What key strategies did the author of House Bill 588 implement to facilitate the development and passage of the bill?

Significance of the Study

Many civil rights lawyers considered the *Hopwood* case “the most significant threat to racial quotas or admission policies since the U.S. Supreme Court ruling in 1978 on Alan Bakke” (Ackerman, 1994, p. A1). The *Bakke* case permitted some forms of race-based admissions procedures. If subsequent court cases eliminated race as a factor in an admissions policy, their effect would become a critical point of analysis for policy makers. Texas and other states would have to ask, “How do we maintain diversity in higher education in light of *Hopwood* (and potentially similar decisions)?” The Texas Legislature’s model, House Bill 588, could be used as a policy model because it does not use race as an admissions factor while, at the same time, it is intended to maintain diversity in Texas colleges and universities.

This study provides other states and policy analysts two kinds of information: (a) other factors that can be used in place of race in admissions criteria and (b) insight into how support was built to enact legislation dealing with the issue of minority under-representation in higher education.

Limitations of the Study

While there are some advantages to a qualitative study, such as being able to uncover “the intricate details of phenomena that are difficult to convey with quantitative methods” (Strauss & Corbin, 1990, p. 19), this study, like every qualitative case study, regardless of how well it is conducted, was subject to a number of limitations. First, this study did not use statistical procedures nor quantitative measures to test its hypotheses

(Bogdan & Biklen, 1992). Second, this case was based primarily on historical evidence, which is incapable of relaying “exactly” what happened during the 75th Legislature. Third, since information was gathered through interviews, document collection and observations, there was a danger that interpretation of this information was subject to personal bias. Bogdan & Biklen recommendation that researchers can “guard against their own biases by recording detailed field notes that include reflections on their own subjectivity” (p. 46). Finally, Glesne & Peshkin (1992) noted that because most researchers are the main research instruments, in that they gather the data and interact with research participants, it is important that researchers focus on being objective throughout the research process. They advise that “[i]n qualitative research, the researcher’s role is to observe and measure, and care is taken to keep the researcher from ‘contaminating’ the data through personal involvement with the research subjects. Researcher ‘objectivity’ is of utmost concern” (p. 6).

Organization of the Study

The study consists of five chapters. This first chapter provides an introduction to the study. It also states the problem and the purpose of the study, and lists the questions guiding the research study. This is followed by a description of the significance, limitations and organization of the study. Chapter II presents a review of the literature, including: (1) an introduction to the review of the literature; (2) a summary of Meranto’s (1967) systems approach model to political innovation; (3) a review of the conceptual framework guiding the collection, organization and analysis of the data in this study; and

(4) an examination of the “Conditions Outside the Texas Legislature” such as the environmental influences and major demand articulators. Chapter III outlines the methodology of the study. Chapter IV details the internal conditions of the 75th Legislature, its response to external influences, and the outcomes of the legislative process. Chapter V presents a summary of the key findings, interpretation of the findings, conclusion, and implications of the study.

CHAPTER II

REVIEW OF THE LITERATURE

Introduction

This chapter will present a review of the literature related to legislative and interest group behavior. Particular attention will be given to Meranto's (1967) model, which examines the societal and legislative conditions that influence innovative legislative change. In addition, the chapter will review two courts decisions related to the *Hopwood* case and subsequent interpretations by the Attorney General of the State of Texas. It will also summarize the literature specific to the demographic changes in Texas.

The review begins with an overview of the systems approach to political innovation, which is the basis of the model constructed by Meranto (1967). Meranto incorporated the systems approach and a legislative model into a conceptual framework for his "Model of Legislative Change." The basic assumption of the model is that *new inputs* (environmental changes) create input demands and influence the interactions within the legislative system. The result is *new outputs* (new legislation) that emerge from these interactions.

To accommodate this study, Meranto's (1967) model is adjusted from its intended purpose to study the reversal of a position on a long-standing federal legislative issue to a model that examines the immediate conditions that affected the enactment of state legislation, at a specific time. In other words, this study differs from Meranto's in its

timeframe and level of government. This study, however, follows Mererato's general design—to identify the societal influences and legislative influences³ on a policy issue. It is important to note that the focus of this chapter is on the first part of Meranto's model, which in this study is termed "Conditions Outside the Texas Legislature." These are the societal influences on the system, which include: (1) the "Environmental Influences" that place *input demands* on the system, and (2) the "Major Demand Articulators" that Meranto has identified as the groups or individuals who provide legislators with *legislative input*.

Background on the model guiding this study—a systems model—is presented first.

A Systems Model

In attempting to understand how major legislative innovation occurs in political systems, Meranto (1967) failed to find an existing model that would take into account the influences of the policymaking process.⁴ What he found examined the process in which a bill becomes a law or focused on conflict adjustment and consensus building. Not having found a model specifically aimed on what influences major political change at the legislative level, Meranto created his own model using the systems approach to

³ The legislative influences on a policy issue are those factors "within" the legislative system, the Texas Legislature in this case. These influences, and their affect on the new output, will be identified and discussed in chapter IV.

⁴ Meranto (1967) wanted to understand how major innovation occurs, in particular he wanted to know about the politics surrounding the enactment of the federal Elementary and Secondary Education Act of 1965. He was interested in knowing why previous attempts to enact such legislation had failed, and what social and political changes attributed to the success of this Act.

political change. To explain how major legislative innovation occurs, he “combine[d] elements of the systems approach to political behavior at the societal level, as developed by such theorists as David Easton and William Mitchell, with aspects of a legislative model constructed by John C. Wahlke and his colleagues” (p. 7).

David Easton (1965) states that a system is:

any set of variables regardless of the degree of interrelationships among them....

[A] *political* system can be designated as those interactions through which values are authoritatively allocated for a society; this is what distinguishes a political system from other systems that may be interpreted as lying in its environment. (p. 21)

Meranto (1967) points out that a political system focuses on the interrelationships among political actors and institutions that produce authoritative decisions regarding competing political goals and determine which ones become law. Analysis of a political system and how authoritative decisions are made is particularly important to this study to better understand the development and enactment of House Bill 588. Easton (1957) suggests that:

We can try to understand political life by viewing each of its aspects piecemeal.

We can examine the operation of such institutions as political parties, interest groups, government, and voting; we can study the nature and consequences of such political practices as manipulation, propaganda, and violence; we can seek to reveal the structure within which these practices occur. By combining the results

we can obtain a rough picture of what happens in any self-contained political unit.
(p. 383)

The reasons vary as to why some demands are transformed into issues on political agendas and others are not. Easton (1957) states that:

The distinction between demands and issues raises a number of questions about which we need data if we are to understand the processes through which claims typically become transformed into issues. For example, we would need to know something about the relationship between a demand and the location of its initiators or supporters in the power structures of the society, the importance of secrecy as compared with publicity in presenting demands, the matter of timing of demands, the possession of political skills or know-how, access to channels of communication, the attitudes and states of mind of possible publics, and the images held by the initiators of demands with regard to the way in which things get done in the particular political system. (p. 389)

Meranto (1967) notes that groups utilize their resources to bring attention to a particular social condition that they view as problematic. He says that if they are able to identify their issue as a “crisis,” they are more likely to succeed in their goal.

Conceptual Framework

Meranto’s (1967) model was used in the collection, organization, and analysis of the data in this study. Meranto adjusted a political systems framework from the societal level to the national legislative level. He did this by “reducing the unit of analysis from

the total societal political system to a subpolitical system” (pp. 9-10). In this study, a similar subpolitical system will be the focus of analysis, the Texas Legislature.

In an attempt to clarify the conceptual framework guiding this study, a comparative summary of Meranto’s (1967) “Model of Legislative Change” and this study’s “Model of Legislative Policymaking” is presented below.

A Model of Legislative Change: Meranto’s (1967) model identifies the changes in the environment that have a direct impact on new policy outputs, as well as possible changes from within the system itself. In his study, Meranto (1967) explains that the Elementary and Secondary Education Act of 1965:

was the result of a mixture of past and immediate changes, both in the environment and within the political system, which came together in a unique grouping capable of generating a new major public policy that had long been blocked by a variety of factors. The variables in both categories, the environment and the political system itself, which appear to hold the most promise for explaining the nature of the changes and how they contributed to the output under consideration. (p. 10)

More specifically, the first major category of Meranto’s (1967) model calls for the examination of the external influences that create input demands, which he terms “Environmental Changes.” His environmental changes are composed of two subcategories: (1) circumstantial conditions, and (2) major demand articulators. The circumstantial conditions refer to unexpected environmental changes that may have an affect on the policymaking process. Some conditions that may characterize the

environment include periods of economic instability or various social changes. Meranto also notes that a legislator can be personally influenced by the circumstantial conditions in the environment. He says that the circumstantial conditions can have a direct impact on legislators who perceive their effect. The major demand articulators include those actors who “have an influential impact on the nature of interaction within the legislative system and the kinds of outputs that emerge from it” (p. 11). These can include interest groups, constituents, and political parties.

The second major category of the model calls for an examination of the internal influences that affect the new output, which Meranto (1967) calls “Changes Within the Legislative System.” These will to be discussed further in chapter IV.

A Model of Legislative Policymaking: As previously mentioned, Meranto’s (1967) model has been modified to accommodate the purpose of this study. First, the two major categories are renamed: (1) from “Environmental Changes” to “Conditions Outside the Texas Legislature,” and (2) from “Changes Within the Legislative System” to “Conditions Within the Texas Legislature.” Second, one subcategory is renamed—“Circumstantial Conditions” is changed to “Environmental Influences.” Both models retain the name of the other subcategory entitled “Major Demand Articulators.”

This model allows for three primary environmental influences outside the Texas Legislature that created input demands on the system. The two unexpected changes in the environment included the *Hopwood* case and the former Texas Attorney General’s interpretation of *Hopwood*. The third environmental influence was the projected demographic changes in Texas. Because these three societal conditions were perceived

as affecting minority representation in higher education, they became input demands on the legislative system via legislators themselves. The model also identifies four major demand articulators: interest groups, private citizens/constituents, state agency legislative liaisons, and political parties.

In sum, this chapter will show how the *inputs*, by way of demands (i.e., social, legal and demographic), were placed onto the legislative system. How the efforts by minority legislators seeking a response to the *Hopwood* ruling were converted by the processes of the system into an *output* will be examined in chapter IV.

Conditions Outside the Texas Legislature

Environmental Influences

Meranto (1967) states that the openness of a legislative system allows it to be responsive to environmental changes. The environmental conditions are then “converted to political demands either by members within the system or by demand articulators” (p. 13). He explains that individuals or groups who perceive a specific societal problem utilize their political resources to seek governmental redress.

During the 75th Legislature, minority legislators and various education groups perceived the *Hopwood* ruling and Attorney General Dan Morales’ subsequent interpretation of it as threats to minority representation in higher education, a situation which was made even more significant by the projected demographic changes in the State. As a proactive measure, they sought a legislative solution. Later in this chapter is a review of the three environmental influences on the Texas legislative system in 1997:

(1) the *Hopwood* case, (2) the former Texas Attorney General's interpretation of *Hopwood*, and (3) the projected demographic changes in the State of Texas. First, however, an overview of the admissions process (the basis of the lawsuit) is presented as background information.

Hopwood v. State of Texas, 861 F. Supp. 551 at 557 (W.D. Tex. 1994) described the admissions process at The University of Texas School of Law as becoming increasingly complicated. In the early 1960's it was fairly easy to get admitted into the law school. But, as the number of applicants exceeded the school's capacity, a more selective process was established. Admissions became based on a number of factors, including the Texas Index (TI) number, which is a score calculated by using an applicant's undergraduate grade point average (GPA) and the Law School Aptitude Test (LSAT) score. By the 1992 school year, the law school was placing applicants into one of three categories based on their TI scores: (1) presumptive admit, (2) presumptive deny, or (3) discretionary zone. Applicants in the presumptive admit or in the presumptive deny groups received little review. The discretionary zone applicants received a more thorough review. Non-minority applicants with a TI score of 199 were placed in the presumptive admit groups. Minority applicants, in contrast, needed only a 189 TI score to be presumptively admitted. The presumptive deny score was 192 for non-minorities and 179 for minorities. *See Hopwood*, 78 F.3d at 935-36. The standards were designed "to meet an 'aspiration' of admitting a class consisting of 10% Mexican Americans and 5% blacks, proportions roughly comparable to the percentages of those

racers graduating from Texas colleges.” *See id.* at 937. Additionally, the University had created a separate committee to review minority applicants in which:

black and Mexican American applicants’ files were reviewed by a minority subcommittee of three, which would meet and discuss every minority candidate. Thus, each of these candidates’ files could get extensive review and discussion. And while the minority subcommittee reported summaries of files to the admissions committee as a whole, the minority subcommittee’s decisions were “virtually final.” *See id.* at 937

The two different policies—“separate zones of scores and separate committees—are the two specific parts of the admissions procedure that have received strong criticism and were the basis for both the [U.S.] District Court and the Court of Appeals decision” (Kauffman & Gonzalez, 1997, pp. 233-234).

The Hopwood Case

September 29, 1992: After four White students applied for admission to The University of Texas School of Law and were rejected, they filed suit against the University. They contended that the law school’s affirmative action admissions program had discriminated against them and favored less qualified Black and Hispanic applicants through the use of a separate subcommittee. The plaintiffs included: Cheryl J. Hopwood, Douglas W. Carvell, Kenneth R. Elliott, and David A. Rogers (Morales, no date).

August 19, 1994: *Hopwood v. State of Texas*, 861 F. Supp. 551 (W.D. Tex. 1994) was tried before the United States District Court in Austin, Texas. U.S. District Judge

Sam Sparks ruled that in 1992 The University of Texas at Austin unconstitutionally discriminated against the plaintiffs because it separately evaluated White and minority law school applicants. However, he did not order the law school to admit them since no injury was done to the applicants (Ackerman, 1994). In its conclusion, the Court stated:

It is regrettable that affirmative action programs are still needed in our society.

However, until society sufficiently overcomes the effects of its lengthy history of pervasive racism, affirmative action is a necessity....Commitment to affirmative action programs in educational institutions as just and necessary, however, does not imply that the individual rights of nonminorities should fall by the wayside or be ignored....Only by applying strict scrutiny can the judicial branch assure society that the important individual rights protected by the Fourteenth

Amendment have not been unnecessarily and unfairly burdened solely as a function of the color of an individual's skin....The Court believes the only way of assuring an *undue* burden is not placed on innocent parties in an admissions procedure is to treat *all* applicants as individuals and to consider *all* qualifications in selecting the best qualified candidates to comprise an entering class. *See Hopwood*, 861 F. Supp. 551 at 583-84.

When Judge Sparks issued his decision, he stated that because the plaintiffs were denied their Fourteenth Amendment right to equal treatment, they could reapply for admission to the law school without paying the application fees. Each plaintiff was also awarded one dollar compensation for being denied equal treatment (Graves, 1994, pp. A1, A12). In summary, "[t]he district court denied the plaintiffs' requests for punitive

damages, compensatory damages, and an order of admission to law school. The plaintiffs appealed” (Kauffman & Gonzalez, 1997, p. 237).

March 18, 1996: The United States Fifth Circuit Court of Appeals reversed the results of the 1994 trial. The three-judge panel “called on UT officials to overhaul the law school admissions policy so that race is no longer considered except under very narrow circumstances” (Stutz, 1996a, pp. A1, A17). The Court said that the law school presented no compelling evidence to justify the elevation of some races over others, “even for the wholesome purpose of correcting perceived racial imbalance in the student body.” *See Hopwood*, 78 F.3d at 934. The Appeals Court ordered the District Court to reconsider the case, including damages and the students’ admittance into law school (Stutz, 1996a).

In the discussion of its opinion, the Fifth Circuit Court rejected Justice Powell’s diversity rationale in *Bakke*. It argued that *Bakke* had no binding precedent on the *Hopwood* case since the diversity rationale is mentioned only in Justice Powell’s opinion. *See id.* at 944. “In short, there has been no indication from the Supreme Court, other than Justice Powell’s lonely opinion in *Bakke*, that the state’s interest in diversity constitutes a compelling justification for governmental race-based discrimination.” *See id.* at 945.

On the matter of present effects of past discrimination, the Fifth Circuit Court emphasized that:

By the late 1960’s, the school [University of Texas School of Law] had implemented its first program designed to recruit minorities...and it now engages in an extensive minority recruiting program that includes a significant amount of

scholarship money. The vast majority of the faculty, staff, and students at the law school had absolutely nothing to do with any discrimination that the law school practiced in the past. In such a case, one cannot conclude that a hostile environment is the present effect of past discrimination. Any racial tension at the law school is most certainly the result of present societal discrimination and, if anything, is contributed to, rather than alleviated by, the overt and prevalent consideration of race in admissions. *See id.* at 953.

Additionally, the Fifth Circuit Court rejected using the history of discrimination in Texas public schools to support the admissions policy under review. Though it acknowledged Texas' history of racial discrimination in its public schools, it held that "the law school has no comparative advantage in measuring the present effects of discrimination in primary and secondary schools in Texas." *See id.* at 951. Instead, the judges suggested that it would be more proper for the State of Texas, through the legislature, to find the present effects of past segregation. In summary, the Court ruled that race could not be used as a factor in the law school's admission criteria to achieve diversity, combat a hostile environment, alleviate its poor reputation, or eliminate present effects of past discrimination by anyone else other than the law school. *See id.* at 962.

When the Fifth Circuit Court overruled the District Court's ruling on The University of Texas School of Law's affirmative action admission policy, the State of Texas began entertaining three ways in which to respond: (1) appeal to the Fifth Circuit Court to rehear its contention; (2) appeal to the U.S. Supreme Court; or (3) forgo an appeal (Gonzalez, 1996). Attorney General Morales' initial response was to forgo an

appeal, stating that some civil-rights experts “are not comfortable that this is one of the stronger cases with which to present the U.S. Supreme Court with the issue of affirmative action and higher education” (Gonzalez, 1996, p. A1). Morales also cautioned about the national implications that the case could have. He said, “I think that it would be irresponsible for us to attempt to deal with this case on the assumption that it was only going to impact on the University of Texas or on the states of the 5th Circuit” (Gonzalez, 1996, p. A1).

Morales finally decided that Texas would appeal to the U.S. Supreme Court. He stated, “[w]e have found ourselves in a situation where I think the harmful consequences of this ruling, if allowed to stand upon our state and upon higher education, compel the action that we have decided upon” (Scott, 1996a, p. A7). He also said that, “it is important to preserve some type of formal affirmative action program” (Walt, 1996, pp. A1, A10). Additionally, Morales sought a stay from the Fifth Circuit Court to temporarily suspend its ruling (Stutz, 1996c, pp. A17, A28). The stay was granted allowing “universities in Texas, Louisiana and Mississippi to reinstate those programs while they wait for the U.S. Supreme Court to act on an appeal Texas is preparing” (Roser, 1996, pp. A1, A7).

April 30, 1996: Morales filed an appeal with the U.S. Supreme Court, challenging the federal ruling that struck down race-based admissions procedures at The University of Texas School of Law (Stutz, 1996d). After filing the appeal, Morales’ made comments that angered minority activists. He stated:

The time has come to chart a new course to ensure equal treatment and inclusiveness in the admissions process....We will never overcome past discrimination by practicing discrimination today....It is simply wrong to give one applicant an automatic advantage over another applicant, based solely upon the color of one's skin. It was wrong 50 years ago, and it is wrong today. (Scott, 1996b, p. A1)

Al Kauffman, the lead attorney for the Mexican American Legal Defense Education Fund, noted that Morales' comments "imply that minority students and employees are less qualified and none of those things are true. His statement is inconsistent with the state's position in the litigation and could hurt the state's chances on appeal" (Scott, 1996b, p. A1).

July 1, 1996: The Supreme Court issued its decision. It voted to leave intact the Fifth Circuit Court's ruling striking down race-based admissions policies at the law school. The Court said that it would not review a policy that was no longer in effect (Scott & Calderon, 1996).

Attorney General Morales' Interpretation of *Hopwood*

On August 21, 1996, Attorney General Dan Morales issued guidelines for race-neutral admissions policies, including financial aid decisions (Morales, 1996b). In this interpretation⁵ of the 1996 ruling, Morales stated that the *Hopwood* decision applied to all

⁵ Attorney General Morales said that he sent out a letter because he had received calls from many general counsel and other university administrators inquiring about the Supreme Court's denial and what this meant regarding the use of affirmative action in Texas. Morales' letter provided general guiding principles and the rationale for his interpretation. He suggested that institutions consult with their own lawyers in applying these principles (Morales, 1996a).

admissions and financial aid decisions in all state colleges and universities, not just the law school that was the subject of the lawsuit. In his letter, Morales encouraged universities to pursue diversity in other ways (Morales, 1996a). Morales further cautioned that “[d]oing otherwise could expose institutions and individuals alike to potential liability for actual and punitive damages” (Morales, 1996a, p. 7). Additionally, Morales (1996a) justified the inclusion of financial aid decisions in race-neutral policies as follows:

I include financial aid decisions because the justification for race based financial aid is the same as for affirmative action programs: diversity and the eradication of present effects of past discrimination. *Hopwood* expressly eliminates diversity as a justification for racial classifications. As to the present effects justification, *Hopwood* and *Podberesky*, on which the *Hopwood* Court relies, make it almost impossible to prove present effects of past discrimination. (p. 7)

At the beginning of his letter, Morales clarified that the “Supreme Court’s denial of our petition neither affirmed nor reversed the Fifth Circuit Court’s *Hopwood* decision” (Morales, 1996a, p. 1). He stated that the Court simply decided not to consider the case because the University’s admissions program in dispute was no longer used and clarified that the Fifth Circuit Court’s *Hopwood* decision was the law only in the Court’s jurisdiction, which included Texas, Louisiana and Mississippi. All other states in the country were at liberty to disregard the ruling (Morales, 1996a).

Demographic Changes

Review of documents from the 1997 legislative session revealed extensive discussions about projected population changes in the State of Texas. Central to those discussions was the burgeoning growth of Texas' minority populations at the time the *Hopwood* case banned the affirmative action programs at The University of Texas School of Law. Those discussions demonstrated the importance of demographic changes for the policymaking process. The demographic changes were best described by Dr. Steve Murdock, chief demographer of the Texas State Data Center at Texas A&M University, and his colleagues. Murdock, Hoque, Michael, White, and Pecotte (1995) projected that:

The population would become less than one-half Anglo by 2008 and, by 2030, the proportion of the population that is Anglo would be only 36.7 percent while the Hispanic population would account for 45.9 percent, the Black population for 9.5 percent, and the Other population for 7.9 percent of the total population of Texas. (p. 5)

The educational effects were more staggering. In their report, *The Texas Challenge*, Murdock, Hoque, Michael, White, and Pecotte (1999) and his colleagues noted that:

Minority students would account for all of the net increase in the number of elementary and secondary and college students from 1990 to 2030 (because of the number of Anglos would show an absolute numerical decline). It is apparent that the future of Texas education will be closely tied to its minority students. (p. 157)

The report also mentioned that the effect of minority growth would depend on whether or not minorities become full participants in the Texas economy. The report stated:

if minorities ‘catch up’ with Anglos, the result will be increased wealth for Texas, reduced public service demands, and increased tax revenue. If minorities do not obtain greater equity, Texas could become a society with increased socioeconomic inequity, a pattern also occurring in other parts of the United States. (Karoly, 1992, cited in Murdock et al., 1999, p. 221-222)

An editorial in the *Austin American-Statesman* also expressed concern about the potential negative effect of the demographic trends, noting that:

Hispanics are expected to be the majority of Texas residents in the next decade, yet are underrepresented as students and faculty members in state colleges and universities....[T]he state’s economic and social well-being will be jeopardized if the majority of its residents do not receive the education necessary to assume professional and leadership roles in the future. (“Bills counter,” 1997, p. A12)

Interestingly, the demographic implications had a significant impact on Republican State Senator Bivins, Chairman of the Senate Education Committee. In fact, it was Murdock’s work that motivated the Senator to later co-sponsor legislation with minority legislators to ensure diversity in higher education. In an interview he stated, “I was more motivated because of Murdock’s work than I was *Hopwood*. On the other end, I would lie to you if I said that *Hopwood* was not a catalyst.”

Major Demand Articulators

There are four groups identified in this study as major demand articulators that provided legislators with input. These external influences came from: interest groups, private citizens/constituents, state agency legislative liaisons and political parties.

Interest Groups

In his work *The Governmental Process*, David Truman (1951), defined an interest group as any group with “shared attitudes” that makes a demand on society. He stated that a group making a demand on an institution of government would be considered a political interest group. Greenwald (1977) says that interest groups are organized bodies of individuals with shared attitudes who come together to further their common goals. He adds that groups also develop when they feel victimized by circumstances affecting their social status or their pocketbook. Truman (1951) further suggests that interest groups arise when the system has been disturbed by a major societal change.

Lobbyists are the agents and lobbying is the activity through which interest groups transmit their concerns and demands to the participants in the public policy process (Greenwald, 1977). In the quest for a natural sense of balance, it is to be expected that, when a push comes in one direction of an issue, a push in the opposite direction is likely to follow (Milbrath, 1970). “When groups push on both sides of an issue, officials can more freely exercise their judgment than when the groups push on only one side” (Milbrath, 1970, p. 419).

Cole and Taebel (1987) found that the power of interest groups largely depends on the following:

1. *size*—elected officials are likely to be sympathetic to the needs of the larger interest groups with the more potential voters;
2. *internal cohesion*—members of groups with the same values are more effective in attaining their goals, especially if there is strong agreement on a policy matter;
3. *money*—having financial resources allows interest groups to hire effective lobbying staff, and the groups are able to contribute money to the candidate through their own political action committees; and
4. *expertise*—legislators are known to defer to groups with a great deal of knowledge when dealing with more technical issues.

Cole and Taebel add that electioneering is another method interest groups use to influence the policy-making process. This type of influence is exerted through voter organization, campaign contributions, and candidate recruitment. Larger interest groups are more likely to be involved in electioneering. Through this type of influence, interest groups seek legislative understanding of their side of issues. A final means of impacting the political process is litigation, though often used only as a last resort, they said.

Private Citizens/Constituents

Blair (1967) says that constituents are a source of legislative initiation too. Either acting alone or in groups, individuals petition representatives to support legislation.

Relating to *who* influences a legislator's voting behavior, Keefe, Abraham, Flanigan, Jones, Ogul, and Spanier (1986) listed the following in order of most influence to least influence: other legislative members, constituents, interest groups and administration. Other influences identified included party leadership, staff and reading.

Keefe et al. said that legislators seek the advice of colleagues they trust primarily when time is limited, the issues are complex or when there is some political risk. However, a legislator's constituency is a close second; and the more pressure from the district, the greater the influence. Turner and Schneier (1970) found that constituent influence is more ambiguous, particularly when comparing it to the influence of political parties. Turner and Schneier identified four general constituency characteristics to help determine differences in voting behavior. The four are race, region, ethnic associations, and degree of urbanization.

State Agency Legislative Liaisons

Kraemer, Newell, and Prindle (1996), in their study of the Texas Legislature, are among the few authors to acknowledge the involvement of state bureaucrats and state agencies in the policymaking process. Their study refers to individuals working for a state agency as "state agency legislative liaisons." In Texas, they act as the legislative liaisons between state agencies and the legislative process. Kraemer et al. said that the primary function of state bureaucrats is the execution of the laws of Texas. "In carrying out this task, however, they have considerable administrative discretion; that is, they are relatively free to use their own judgement as to just how the laws will be carried out" (p. 302). For this reason, individuals working for state entities are sometimes called to aid the lawmakers, especially when proposed legislation will have a direct impact on the work of a state agency. These liaisons present their professional views mostly by furnishing specialized information to legislators and by helping to draft bills.

Political Parties

Kraemer et al. (1996) note that the purpose of political parties is to win elections so that they can control the output of public policy. Keefe et al. (1986) add that a political party's aim is to control government so that it can make policies that favor the interests of its supporters and the party's own interests. They caution that when both chambers (House and Senate) are not controlled by the same party, "conflict is heightened and deadlocks are common" (p. 220). In such situations, success comes with the ability to forge bipartisan coalitions.

Kraemer et al. (1996) state that the source of party conflict is usually ideology. They describe ideology as "a system of beliefs and values about the nature of the good life in the good society, about the relationship of government and the economy, about moral values and the way they should be achieved, and about how government is to conduct itself" (p. 132).

Keefe et al. (1986) define a *liberal* ideology as supporting government policies that promote welfare and regulate business, whereas a *conservative* ideology would oppose such involvement, as well as oppose government regulation over business.

Kraemer et al. (1996) explain that:

Ideology is one of the most important bases for political parties everywhere, but in Texas, where parties have historically been weak, ideology has usually been more important than party affiliation. The major ideological conflict has been between conservatives and liberals. (p. 159)

Davidson's (1969) research findings indicate that a legislator's likelihood of being influenced by a political party or interest group depends on numerous factors.

Though generalizing, he states that:

Those members who are most favorably oriented toward parties and groups—low-seniority and electorally vulnerable members, for example—are apparently more dependent upon these organizations for the cues they need. Members less in need of these commodities are less favorably disposed toward parties and interest groups. (p.174)

However, Davidson (1969) adds two caveats. He says that:

First, leaders are more party-oriented than nonleaders, despite the fact that their high seniority and relative electoral safety might otherwise foster independence from partisan claims. Secondly, party affiliation itself seems to exert an independent impact upon party and interest-group roles, Republicans showing themselves slightly more proparty and progroup than Democrats. This variation may be the result of different kinds of constituencies, or of divergent patterns of intra-House socialization. (pp.174-175)

When it comes to casting a vote, Turner and Schneier (1970) found that:

Some independent members vote their convictions in spite of what they perceive to be the demands placed upon them; and in many cases other variables—such as personal commitments to other members, relations with interest groups, or committee membership—are controlling. Nevertheless, the great majority of

congressmen are interested in re-election, and roll-call votes frequently are important in re-election campaigns. (p. 10)

Thus, Turner and Schneier state that, more often than not, a legislators' voting behavior reflects the influence of fellow party members in their district.

Because of the difficulty in actually assessing the full extent of a political party's influence on a legislative vote, Meranto (1967) notes that political scientists depend on roll-call analysis because this method provides the degree to which legislators of the same party vote together on a specific issue. Regarding congressional voting behavior, Turner and Schneier (1970) state that the roll-call vote:

accurately reflects the effectiveness of the various pressures brought to bear on each congressman, particularly with regard to issues which are so important or controversial that a part of the membership wants a record kept of the vote. (p. 11)

Conclusion

In summary, Meranto's (1967) model that combines the systems approach and a legislative model provided the essential guide in examining how major innovation occurs at the legislative level. To accommodate this particular case study, Meranto's model was modified to examine the major conditions outside the Texas Legislature that had a direct influence on the outcome of House Bill 588, as well as the primary conditions within the legislature that also affected the bill. How the above two factors are related to one another will be analyzed in chapter IV.

CHAPTER III

METHODOLOGY

Research Design

Research points to the appropriateness of the use of qualitative studies to uncover and understand any phenomenon about which little is known (Strauss & Corbin, 1990). A natural history approach allows the author to “dramatically portray a sense of people and place and their interactions with the researcher” (Glesne & Peshkin, 1992, p. 163). Going to the place where the actual events occurred and talking to the people involved in the process were especially helpful in gaining the needed in-depth understanding of how the Texas Legislature responded to the demands of minority legislators and interest groups to maintain diversity in the State’s colleges and universities. The study examined the politics surrounding the development and enactment of House Bill 588 during the 75th Texas Legislature. This qualitative inquiry took the form of a single case study.

Case studies are beneficial when conducting a detailed examination of a setting, a single subject, or a particular event (Merriam, 1988, cited in Bogdan & Biklen, 1992). “[C]ase-oriented methods often stimulate the development of new substantive theories” (Ragin, 1987, p. 44). A case study of organizational decision making is critical to the understanding of organizational behavior and the theoretical aspects of that behavior (George & McKeown, 1985).

The use of qualitative research in a case study generates what is often referred to as “soft” data, but this data is “rich in description of people, places, and conversations”

(Bogdan & Biklen, 1992, p. 2). Unlike a quantitative study, a qualitative case study is evolutionary in its design, interview questions and interpretations, thus it is susceptible to change along the way (Glesne & Peshkin, 1992). Glesne and Peshkin (1992) suggest that the openness of a qualitative research design allows:

the researcher to approach the inherent complexity of social interaction and to do justice to that complexity, to respect it in its own right. Qualitative researchers avoid simplifying social phenomena and instead explore the range of behavior and expand their understanding of the resulting interactions. Throughout the research process, they assume that social interaction is complex and that they will uncover some of that complexity. (p. 7)

Due to the complexity and evolving process of this qualitative research, the data collection and data analysis occurred simultaneously. This allowed the study to take shape as it proceeded. Glesne and Peshkin (1992) recommend that the researcher:

Consistently reflect on your data, work to organize them, and try to discover what they have to tell you. Writing memos to yourself, developing analytic files, applying rudimentary coding schemes, and writing monthly reports will help you learn from and manage the information you are receiving. (pp. 127-128)

The Setting

The setting for this study was the Texas Legislature in Austin, Texas in 1997. The Legislature's primary functions are to represent the people of Texas, enact laws, and investigate and administer oversight to ensure sound public policy. In the process of

lawmaking, legislators help shape the political agenda for Texas. They determine how the State appropriates its funds and make decisions affecting major State issues. The biennial legislative sessions are held every odd-numbered year for 140 days, beginning the second Tuesday in January (Kraemer et al., 1996).

The Texas Legislature is made up of 150 members in the House of Representatives and 31 members in the Senate. State representatives are elected to serve two-year terms and in 1997 likely represented a constituency of approximately 114,000 residents. Senators serve four-year terms, and during the 75th Legislature represented a population of about 552,000 (Texas Legislative Council, 1990).

Since Texas has become a two-party state, Democratic and Republican, political party affiliation and party organization have grown in importance (Harmel & Hamm cited in Kraemer et al., 1996, p. 212). Historically, Texas has been a one-party state: Democratic. Within the last 20 years, however, Republican representation in the legislature has tripled. In 1989 Republicans in the Texas House formed a formal caucus (Kraemer et al., 1996). Numerous other caucuses exist today based on party, ideology and ethnicity, including the Mexican American Legislative Caucus and the Texas Legislative Black Caucus in the House of Representatives, and the Senate Hispanic Caucus.

While ethnic minority groups play an important role in politics, they are underrepresented in the Texas Legislature. Although in 1995 more than 37 percent of the Texas population was minority, the legislative membership was less than 28 percent minority (Kraemer et al., 1996). In 1997, the House was composed of 108 Anglo

legislators, 28 Hispanics, and 14 African-Americans. In the Senate, 22 were Anglo, 7 were Mexican-American, and 2 were African-American (Texas House Directory, 1997).

During the 75th Legislature, the presiding officer in the Senate was Lieutenant Governor Bob Bullock. The lieutenant governor is elected by the people of Texas to serve a four-year term. The Texas Constitution names the lieutenant governor as the President of the Senate and gives the Senate the authority to write its own rules. The rules that are adopted by the majority of the senators determine how the Senate will conduct its business during the session and how much power the lieutenant governor can wield. Current rules give the lieutenant governor a great deal of influence in shaping State policy. For instance, the rules allow the lieutenant governor to decide all parliamentary questions and to use his discretion regarding Senate procedural rules. The rules also allow him to set the bills in any order and to appoint committee chairpersons and committee members to study legislation in detail (Texas State Senate, 2003).

The presiding officer of the House was Speaker James E. “Pete” Laney. The Texas Constitution requires that at the beginning of each legislative session the House legislators elect one of its members to serve as Speaker. The Speaker’s duties include: maintaining order during floor debates, recognizing legislators who wish to speak during floor proceedings, and ruling on procedural matters. His other duties are spelled out in the House Rules of Procedures, which are adopted by a majority of the House members at the start of each session. The Speaker is given the authority to make committee assignments, including naming of committee chairs and vice chairs. He also has the responsibility of referring all legislative bills to a committee, can appoint conference

committees and select committees, and can charge committees to conduct interim studies (Texas House of Representatives, 2003).

The Subjects

The subjects for this study were composed of three groups: (1) the 150 state representatives and the 31 state senators who served during the 75th Legislative Session in 1997; (2) the individuals who were identified as the “key legislative stakeholders” in the policymaking process, and (3) the major demand articulators who provided legislative input to legislators. The first group of subjects, primarily the House members,⁶ provided relevant information needed to develop various tables identifying the demographic characteristics of legislators that may have had an impact on their votes. The characteristics compared include: political affiliation, composition of legislative district, tenure, gender, ethnicity, and membership in one of the two minority legislative caucuses. This information was gathered from legislative documents; therefore, questionnaires or interviews were not necessary in gathering this specific data. The data were then compared to legislator’s voting records to determine whether or not there was a relationship between the characteristics listed above and legislators’ voting preferences.

Key legislative stakeholders were interviewed to obtain their own insights into the actual events. Major demand articulators provided the list of demands (or “legislative

⁶ Since most of the Senate members voted for House Bill 588, a comparative analysis between the various demographic characteristics and their vote was not necessary.

inputs” for the purposes of this study) placed on legislators. For this third group, information was gathered primarily from legislative documents and interviews.

Data Collection, Instruments and Data Analysis

This study depended on various methods of gathering data to increase confidence in the research findings. According to Glesne and Peshkin (1992), the three dominant types of qualitative inquiry include: participant observation, interviewing, and document collection. This study incorporated all three of these methods of gathering data. Observation of legislative sessions was not all “live,” but rather depended on video and audio taping of major legislative events (e.g., committee hearings and House and Senate floor debates).

Document collection included primary and secondary historical sources. Among the primary sources examined were transcripts of the legislative proceedings during the regular session of the 75th Legislature as they are recorded in the House Journal and Senate Journal, copies of the various versions of House Bill 588, and additional bills intended to address other effects of the *Hopwood* decision. Committee reports, transcripts and official statements of various interest groups and individuals were also reviewed. Video and tape recordings of the House and Senate proceedings were examined, as well as various other pertinent documents associated with the passage of House Bill 588. Secondary resources included articles from various newspapers throughout the State, and some national and state magazine articles.

The main method for collecting information about the events and key stakeholders leading the enactment of House Bill 588 was interviews. Interviews were divided into two groups: informants and participants. Informants were those who helped identify additional data sources and provided information about pertinent history. These were witnesses to the process, such as legislative assistants and committee staff. Participants were those who were part of the process that created House Bill 588, those whose input was required to implement the legislation, and those who were key stakeholders in the decision-making process. Participants contributed in two ways to the study, first by providing names, and second by offering their own insights into the actual events. The informants and the participants were asked to answer: What key stakeholders, events and strategies most affected the ratification of House Bill 588? They were then asked to identify people who could answer the same question. The names were then compiled into a list of participants for the next round of inquiry.

After the preliminary interviews, identification of the major events and strategies, and review of some of the documents obtained previously, in-depth interviews were conducted with those identified as key participants. Open-ended questions were developed for the interviews. Such questions provided the needed flexibility to allow the respondents to “answer from their own frame of reference rather than from one structured by prearranged questions....[thus] getting the subjects to freely express their thoughts around particular topics” (Bogdan & Biklen, 1992, p. 3). The following are the core questions that were asked of the interviewees:

- a. How did members of the Texas Legislature perceive the *Hopwood* ruling?

- b. What influence did the implementation of the *Hopwood* ruling have on the policymaking process of the 75th Legislative Session?
- c. What conditions within the Texas Legislature favored the final construction of House Bill 588, and what were the final provisions of the legislative policy addressing minority representation in higher education?
- d. What key strategies did the author of House Bill 588 implement to facilitate the development and passage of the bill?

The interviews were instrumental in identifying the “societal conditions” that prompted the filing of House Bill 588 and in examining the impact of the “legislative conditions” within the legislature during the 1997 legislative session.

The interviews were tape recorded, with the permission of the interviewees. Throughout the process, a notebook was maintained detailing descriptive and analytical notes. Notes were arranged in chronological order. Other data was kept in a loose-leaf notebook that was easily separated and rearranged as necessary. This information was then transcribed onto the computer.

Reliability and Validity

The research design of this study raises the issue of research reliability and validity since it is highly dependent on the use of interviews and their trustworthiness. In determining trustworthiness, Lincoln and Guba (1985) mention that inquirers find it helpful to ask the following questions:

- (1) *“Truth value”*: How can one establish confidence in the “truth” of the findings of a particular inquiry for the subjects (respondents) with which and the context in which the inquiry was carried out?
- (2) *Applicability*: How can one determine the extent to which the findings of a particular inquiry have applicability in other contexts or with other subjects (respondents)?
- (3) *Consistency*: How can one determine whether the findings of an inquiry would be repeated if the inquiry were replicated with the same (or similar) subjects (respondents) in the same (or similar) context?
- (4) *Neutrality*: How can one establish the degree to which the findings of an inquiry are determined by the subjects (respondents) and conditions of the inquiry and not by the biases, motivations, interests, or perspectives of the inquirer? (p. 290)

Glesne and Peshkin (1992) suggest that “[t]he use of multiple-data-collection methods contributes to the trustworthiness of the data” (p. 24). Following their advice and to assure greater validity of the data, the interviewees’ comments were evaluated through the use of multiple sources. Statements given by the interviewees were compared with those of other interviewees and with primary and secondary historical documents. However, there is the concern about researcher objectivity, since qualitative researchers, as the main research instruments, have their own personal values and beliefs. Glesne and Peshkin explain that “[t]he concern with researcher objectivity is replaced by a focus on the impact of subjectivity on the research process” (p. 6).

This study required the researcher to spend considerable time gathering, analyzing and substantiating the data about the politics surrounding the development and enactment of House Bill 588. Like other qualitative studies, its findings portrayed a “description of [the] people, places, and conversations” (Bogdan & Biklen, 1992, p.2) which “show[ed] the complexity, the contradictions, and the sensibility of [the] social interactions” (Glesne & Peshkin, 1992, p. 7) that led to the passage of House Bill 588 by the 75th Legislature.

CHAPTER IV

FINDINGS

In 1997 the Texas Legislature enacted House Bill 588. The bill established uniform admission and reporting procedures for first-time freshman students at the state's colleges and universities. Historically, Texas colleges and universities have been responsible for admissions policies, but in light of the *Hopwood* ruling, the Texas Legislature assumed an unprecedented role in creating this new admissions policy.

Prior to the 75th Legislature, minority legislators had identified at least two external forces as especially harmful to minority representation in higher education. These included the *Hopwood* ruling banning the use of race in admissions decisions at The University of Texas School of Law and the actions of Attorney General Dan Morales, which introduced stringent implementation policies pursuant to the *Hopwood* ruling. In addition, policies which made it more difficult for minorities to gain admission to state colleges and universities would lower their representation in student populations and run counter to demographic trends which indicated increases in minority populations. Together, these factors compelled minority legislators to utilize their political positions to alter affects they perceived as problematic. Through converging initiatives, strong leadership, and select strategies exercised by key legislative stakeholders during the session, House Bill 588 became law.

The combined pressures of the input factors identified in chapter II made it likely that the Texas legislature would address the issue of diversity in higher education.

However, according to Meranto's (1967) model, which guided this study, another main source of legislative innovation is found within the system itself. Therefore, the research questions in this chapter were designed to examine the "Conditions within the Texas Legislature" that assured the enactment of House Bill 588. The first question reviews which environmental conditions were perceived as a threat by legislators themselves and entered the legislative system as input demands. The second question examines how the input demands influenced the Texas legislative policymaking process. The third and fourth questions address the conditions within the legislature that secured the passage of House Bill 588.

Research Question 1: How did members of the Texas Legislature perceive the *Hopwood* ruling?

This question was designed to examine whether the *Hopwood* ruling had any affect on legislators. The findings indicated that the ruling had a direct impact, primarily on minority legislators who expected that minority enrollment in Texas higher education would decline. There was fear that minority students would be lured by other states offering race-based scholarships (Brooks, 1997b). A great concern was that the *Hopwood* ruling would reverse gains in minority admissions in higher education made through past judicial intervention (Montejano, 1997). In an interview, Mexican-American Representative Irma Rangel expressed these concerns: "we were all quite devastated with the ruling from *Hopwood*." Although some non-minority legislators

shared some of the same concerns, their participation became more evident during deliberations about legislative proposals introduced during the legislative session.

It is clear from the study's findings that minority legislators converted the *Hopwood* ruling to a political demand. They did this by linking the ruling to a new educational "crisis," arousing public opinion and generating support for remedial legislation. Mexican-American State Senator Gonzalo Barrientos was the first to utilize his political position to seek a solution.

Interview respondents indicated that Barrientos initiated statewide forums to discuss the adverse affects of the *Hopwood* ruling and to propose possible solutions. A former member on Barrientos' staff noted that the Senator was among the first to act. The staff member said:

when the *Hopwood* decision came down, within a month there was a press flurry, and within a month Senator Barrientos had organized a meeting of Hispanic elected officials, community activists, educators, college professors, etc....to take a look at the impact of *Hopwood* and discuss possible remedies.

The longtime staff member also noted that the Senator:

has built a career around civil rights issues, built a career around affirmative action issues, and has been working on this since the '60s. So, he has a history that he brings to it and a reputation that is national, and especially within the Latino community. I think that he was already a leader in this area and it was natural for him to step forward as the leader in the State to bring these different Latino groups together.

David Montejano, an associate professor of history and sociology and then-director of the Center for Mexican American Studies at The University of Texas at Austin, who attended the first meeting convened by Barrientos, concurred that the Senator provided the leadership for the statewide forums. In an interview, Montejano said that the Barrientos had invited him and a few other faculty members of The University of Texas Center for Mexican-American Studies to participate in addressing the affects of the *Hopwood* ruling.

Reflecting on the dialog at that meeting, another attendee stated in an interview that, “with fifty people in the room all with strong opinions on the issue, it was difficult to focus. What that meeting basically led to was a consensus to study the issue further, and come back in the fall with proposals.”

The next meeting was held at the LBJ School of Public Affairs in Austin. According to Montejano, “it was a big conference of 100 people or more. And there were several proposals presented at that time.”

That was the first time that Rangel, became involved in the discussion on how the State could address the impact of the *Hopwood* ruling. Rangel credited Barrientos with including her in the discussions he had organized. In an interview, she stated, “Senator Gonzalo Barrientos invited me to be on a panel of a conference at the LBJ School.”

In an interview, Montejano said that he remembered when Rangel joined the forum discussions. He said, “Irma Rangel was at that conference. That was the first time that Irma got involved directly. She was one of the panelists.”

However, the complexity of the issue and lack of cohesiveness that characterized the discussions concerned Rangel, who noted that progress was slow. She said, “I just couldn’t see that we were getting anywhere.” With the upcoming legislative session only a few months away, Rangel added that she felt like someone had to come up with something to replace the *Hopwood* opinion. “Otherwise we would have to wait a whole year and seven months before our students would be given the access to higher education that they had not had,” she stated.

In an interview, a senior staff member for Rangel confirmed that Rangel felt the pressure of the upcoming legislative session. The staff member said that the upcoming session created a sense of urgency, which prompted Rangel to conduct smaller meetings in her Capitol office in Austin. Montejano was part of the transition that occurred between the public forums to the more individualized group meetings. In his interview comments he said, “we started having meetings after that conference—small meetings, working meetings—with Irma and Gonzalo. Sometimes together and then, of course, as the process started developing, individually.”

The above statements suggest that minority legislators had perceived the adverse affects of the *Hopwood* ruling and sought a legislative solution. Their combined initiatives were instrumental in putting pressure on the Texas Legislature to address the issue of minority representation in higher education.

In summary, the above findings indicate that the Texas Legislature responded to the *Hopwood* ruling. Specifically, minority legislators perceived its adverse affect on minority representation in higher education and converted the ruling to a political

demand. They utilized their political resources to seek a legislative solution. Building on what Senator Gonzalo Barrientos initiated, Representative Irma Rangel would eventually succeed in drafting an acceptable response, House Bill 588.

Research Question 2: What influence did the implementation of the *Hopwood* ruling have on the policymaking process of the 75th Legislative Session?

The findings revealed that Texas lawmakers filed over 20 pieces of legislation countering the ruling's impact. The bills would encourage a diverse study body in higher education through new admissions criteria, provide financial assistance to keep students in Texas schools, protect admissions officials from liability associated with the ruling, and require state agencies to conduct studies to determine disparities in admissions of college students (Texas Higher Education Coordinating Board, 1997). In an editorial, a major local newspaper acknowledged the importance of such legislation because minority students were expected to be the majority of Texas residents in the near future, yet were underrepresented in higher education ("Bills counter," 1997, p. A12).

Minority legislators sought legislative redress to "soften the blow to minorities and others from Attorney General Dan Morales' interpretation," ("Bills counter," 1997, A12) which imposed race-neutral guidelines on state colleges and universities. Justifying his position, Morales said that the guidelines complied with the decision by the U.S. Fifth Circuit Court of Appeals that The University of Texas at Austin School of Law may not use race in admitting students. Morales advised that not following the guidelines could have negative legal ramifications for institutions and individuals alike (Morales, 1996b).

When the 75th Legislature convened, Morales briefed a joint committee on his formal opinion regarding the *Hopwood* ruling and reiterated and extended his stance against affirmative action policies. At the briefing, he told lawmakers that it is illegal to recruit, admit or retain minority students based on race-based programs (Brooks, 1997c). Morales also:

surprised lawmakers with new interpretations of Hopwood. The case, he said, governs all internal university policies, including hiring programs for faculty and administrators, and covers private colleges that receive public dollars. But, he said, the ruling does not apply to the state’s main affirmative action program. The “historically underutilized business” program sets goals for awarding state contracts to women- and minority-owned businesses. (Brooks, 1997c, p. A1)

Minority legislators criticized the opinion as being too broad and ignoring Texas’ long history of legal segregation, including the Dred Scott and Jim Crow laws (Brooks, 1997c, p. A1). African-American State Representative Al Price, Democrat-Beaumont, said, “What happened happened over 400 years—that’s not injustice—that’s oppression” (Brooks, 1997c, p. A1). Interestingly, Rangel defended Morales. She said, “General Morales is simply trying to interpret a bad case....Let’s not lose sight of the real problem here” (Foy, 1997, p. A6).

The *Fort Worth Star Telegram* reported on reaction to Morales’ briefing and, “talk around the capitol made it clear that affirmative action has jumped to a prominent spot on this session’s agenda” (Campbell, 1997, p. B5). As might be expected in shaping major public policy, there were differing perspectives on how to respond to the *Hopwood*

ruling and Morales' interpretation. Democrats supported race-based legislation as part of the solution to ensure a diverse student body in institutions of higher education.

Republicans strongly opposed the use of race in any university admissions decisions.

A. P. Brooks, education reporter for the *Austin American-Statesman* noted that Republicans were “determined to keep race out of any bills aimed at boosting minority enrollment at Texas schools. They want race-neutral policies that would help disadvantaged students of all races” (Brooks, 1997a, p. A1). Additionally, the climate for admissions legislation that would receive favorable consideration in the Texas Senate was set early on in the session by the Chairman of the Senate Education Committee Senator Teel Bivins, Republican-Amarillo. He made it clear that any race-neutral bill giving preference to disadvantaged students would likely pass out of his committee, but race-based legislation would not (Brooks, 1997a).

The shift in political power that had occurred in the 1996 election further intensified the debate over access to higher education. Though the Democrats still held an 82-68 majority in the House, Republicans now controlled the Senate by a 17-14 majority, and no bill could pass without their support. Ultimately no legislation could be enacted without the support of the Republican governor, who held veto power.

The local media provided the best description of the political climate in 1997. It speculated that:

the issue could thrust lawmakers into a bitter and partisan debate over affirmative action that they managed to sidestep in 1995. At stake is the future of affirmative action programs in Texas colleges and universities and millions of dollars in state-

financed scholarships for blacks and Hispanics. Although the federal court ruling in the so-called Hopwood case struck down an affirmative action program at The University of Texas law school, there are conflicting opinions about how broadly to interpret it. (Brook, 1997a, p. A1)

Minority legislators, who led efforts within the legislative system to address this issue were determined to get legislative relief. They introduced over 20 pieces of legislation, calling for new initiatives to curtail the adverse affects they expected would result from the *Hopwood* ruling. Since there were numerous similarities in the legislation drafted, the review of these initiatives is grouped by the four areas of major concern to minority legislators: admissions, financial aid, parity and indemnification.

Admissions

The Texas Legislature considered over 20 alternatives on how to respond to the affects of the *Hopwood* ruling. A review of bills filed in 1997 identified three primary pieces of legislation that attempted to address the most immediate concern—statewide admissions policies. These included Senate Bill 1419, House Bill 588 and House Bill 589. By the end of the session only House Bill 588, a race-neutral bill, was enacted. The bill's intent was to ensure equitable access to higher education for all students in Texas.

Senate Bill 1419, introduced by Senator Royce West, Democrat-Dallas, Senator Gonzalo Barrientos, Democrat-Austin, and Senator Teel Bivins, Republican-Amarillo, would have created a three-tiered admissions procedure for institutions of higher education. The first tier would have required that at least 50 percent of all admissions offers made by a college or university be based on an applicant's academic standing in

his/her high school graduating class, test scores, and other traditional factors used by the institution. However, automatic admissions would be granted to applicants graduating in the top 10 percent of their high school graduating class. Tier two stipulated that at least 40 percent of admissions offers be made by taking into account an applicant's academic standing as well as a list of economic or educational factors (Senate Research Center, 1997a). Tier three mandated that up to 10 percent of admissions made by an institution be offered to applicants who met such factors as "potential to succeed...[or whether they could] help the institution further its mission" (Senate Research Center, 1997a, p.2).

Although the Texas Senate passed Senate Bill 1419 on April 10, 1997 and sent it to the House, Rangel had already determined that House Bill 588 was a better solution to the *Hopwood* ruling. Therefore, the House Higher Education Committee replaced the original Senate bill with language requiring that students granted an athletic scholarship meet minimum admissions criteria for all college freshman students. The substituted version of the bill was enacted into law.⁷

House Bill 588 was introduced by State Representative Irma Rangel, Democrat-Kingsville. It established a uniform admissions system for first-time freshman students. Each state institution of higher education would automatically admit students graduating in the top 10 percent of their graduating class. Academic institutions also would have the option of adopting an automatic admissions policy for students graduating in the top 25

⁷ In response to the strong probability that race-based legislation had little to no chance of passing, African-American Representative Ron Wilson, Democrat-Houston, proposed language requiring the same academic standards for college athletes and nonathletes. Wilson said, "If they admit a student athlete with a 2.0 GPA and 850 Scholastic Aptitude Test, then they have to admit regular students who have the same grades and test scores. I am very pleased with this" (Brooks, 1997g, pp. B1, B8).

percent of their graduating classes. For students not qualified under either of the two automatic admissions procedures, this legislation provided institutions with various socioeconomic factors they could consider in their admissions decisions (House Research Organization, 1997a). The Texas House of Representatives passed House Bill 588 on April 16, 1997. On May 8, 1997, it was passed by the Texas Senate. The bill was signed by the governor on May 20, 1997, and became effective on September 1, 1997.

House Bill 858, introduced by State Representative Tony Goolsby, Republican-Dallas, intended to provide greater accessibility to higher education by creating an open enrollment admissions procedure for undergraduate students. Open enrollment is practiced at two Texas universities, Texas Southern University and University of Houston-Downtown (Senate Research Center, 1997c). The legislation would have required a one percent admission through open enrollment at institutions with an enrollment of 30,000 or more. Institutions with an enrollment of 10,000 or more, but less than 30,000, would have two percent admitted through open enrollment. A two percent admission through open enrollment would have been required at institutions with an enrollment of less than 10,000 (House Bill 858, 1997). While the Texas House of Representatives passed this bill on April 15, 1997, it did not receive a hearing in the Senate Education Committee.

Despite the above admissions legislation, supporters of “affirmative action” policies still feared that race-neutral policies would not ensure an equal educational opportunity for *all* Texas youth (House Research Organization, 1997b). Their concerns were validated by a study conducted by the Advisory Committee on Criteria for Diversity

that was created by the Texas Higher Education Coordinating Board to develop guidelines that might be used in admissions, financial aid decisions, and other programs to achieve diversity in higher education. The committee predicted that:

Although numerous criteria (such as income, parents' education and school district wealth) may be useful in identifying segments of the population in need, no single criterion or combination of criteria will result in the same level of minority participation as occurred under criteria used prior to *Hopwood*.

(Advisory Committee on Criteria for Diversity, 1997, p. I-12)

Moreover, this state advisory committee reported that any combination of factors such as family income or school district wealth would “bring in only 50 to 60 percent of the state’s minority pool” (Ackerman, 1997, p. A40). The committee’s findings disappointed those who had originally expressed hope that establishing language for admissions and financial aid programs to accommodate the new ruling would continue to attract minority students in large numbers (Ackerman, 1997). Jerry Gaston, a Texas A&M University official who chaired the committee, stated that, “[b]efore Hopwood we were doing a poor job....After Hopwood, our job is twice as difficult” (Gold, 1997, p. A1).

Financial Aid

In Morales’ initial interpretation of the ruling, he extended the ban against the use of race for admissions to the awarding of scholarships (Morales, 1996a). “University officials and lawmakers fear[ed] that Texas’ top minority students could be lured by other states not abiding by Hopwood” (Brooks & Roser, 1997, p. A1). The University of Houston was the first major college to question Morales’ advice on scholarships

(“Houston college,” 1997). The Coordinating Board advised universities to follow the counsel of their school lawyers (Brooks & Roser, 1997, p. A1).

In his response to educators who requested further clarification, Morales stirred up even more controversy among legal scholars and higher education officials when he said that his legal opinion extended beyond admissions, financial aid, fellowships and employment practices at public universities. “[H]e implied that private universities accepting government funds should also revise their policies if they factor race or ethnicity. And he said schools cannot administer privately funded minority scholarships” (Campbell, 1997, p. B5).

The need for financial aid became an even more significant factor when the report by the Advisory Committee on Criteria for Diversity, intended to recommend ways to recruit minority students without the use of race, found an alarming level of low-wealth among minority families. The Texas Higher Education Coordinating Board Advisory Committee reported the discouraging results of substituting socioeconomic factors for race. A state newspaper noted that the Committee:

found that of the 6 million people under 25 in Texas in 1990, minorities comprised 62 percent of the 3.13 million belonging to a family of four making \$25,350; 59 percent of the 4.11 million making \$35,000; 57 percent of the 4 million whose parents’ education was less than a bachelor’s degree; and 62.7 percent of those where the school district residential property value per student was less than \$70,000. (Ackerman, 1997, p. A40)

The state's advisory committee reported that the "overwhelming majority of cultural minority families do not have the income to support their children through higher education degree programs" (Advisory Committee on Criteria for Diversity, 1997, p. II-22). The report emphasized that "financial support has become the most significant variable for attending institutions of higher education in Texas; particularly as a result of the current *Hopwood* decision" (Advisory Committee on Criteria for Diversity, 1997, p. II-22). The report also stated that:

Access is too often assumed to be primarily a matter of admission to an institution. If retention is improved, the number of minority students enrolled would increase dramatically (as for all underserved populations). A major deterrent to retention is not simply academic performance, or student desire; it is financial ability to remain in school and not have to leave for employment.

(Advisory Committee on Criteria for Diversity, 1997, p. I-16)

When speaking on the Senate admissions bill, Senate Bill 1419, several higher education state officials advocated for increased funds. Don Brown, then deputy higher education commissioner, stated: "If the admissions policy is changed and no more financial aid is available, it will be hard...to maintain the current level of minority students" (Brooks, 1997d, p. B1). Brown stressed the importance of additional funds for need-based tuition scholarships to retain at least the same number of minority students. He further anticipated that, "If race and ethnicity are not included in consideration for admission, the amount of financial aid would need to be doubled or tripled" (Brooks, 1997e, p. A1). Robert Furgason, President, Texas A&M University-Corpus Christi, said:

“Financial aid is one of the things that’s a real barrier to a number of students in the local region” (Howard, 1997, p. A1). Texas A&M University-Kingsville President Manuel Ibanez agreed stating, “The investment is critical....I think you can sum it up by saying that the state of Texas will not survive the economic buffeting it’s going to take unless we train our population better” (Howard, 1997, p. A1).

Texas A&M University-College Station President Ray Bowen argued that the *Hopwood* decision did not create an admissions problem. He said:

I’ve been preaching for months and nobody will listen to me. It’s not an admissions problem for a place that uses our admission criteria. We never used race as a defining element....The tragedy is our state’s expansion of its interpretation of Hopwood to include financial aid. What we’re concerned with now is that the minority students we admit will not accept our offer of admission because out-of-state institutions have provided better financial aid. (Kirsch, 1997, pp. A1, A4)

Because the Senate admission’s bill did not address such issues as scholarships, retention, and recruitment, the *San Antonio Express-News* reported that some observers of the Senate admissions bill felt it was “unlikely to be as effective as the affirmative-action process used before Hopwood” (“Admissions changes,” 1997, p. B6).

African-American State Senator Rodney Ellis, Democrat-Houston, introduced a bill to increase financial support for students. He proposed establishing a new scholarship program to be funded by a new lottery game. The initiative called the HOPE Scholarship Program would have required students to maintain a B average, while also

performing community service. Ellis stated: “Every Texan deserves the chance to earn a college education” (Brooks, 1997f, p. B4). The senator also said: “Although I have never bought a lottery ticket in my life, people like me would certainly buy many lottery tickets if we knew that that money—in the unlikely event we lose—would go to funding the Hope Scholarship Program” (Spicer, 1997, p. A24).

Another senator speaking in favor of additional financial aid was Democratic State Senator Royce West, an African-American from Dallas. He said: “I will do everything I can as a member of the Senate Education Committee to get funding for the fall of 1998, so that students can afford an education and so that universities can have outreach programs to attract students” (Lee, 1997, p. B9).

While all of these efforts were intended to benefit whichever admissions legislation passed, Rangel, who also filed legislation to increase need-based financial aid, did not exert too much effort in this area. In an interview, she said that she disregarded all criticism implying that *access* legislation was “not going to go anywhere” unless it had appropriate funds. She preferred to separate the success of House Bill 588 from a dependence on funding.

Table 2 shows a summary of the 75th Legislature’s appropriations in response to the anticipated impact of the *Hopwood* ruling. There was no consensus on whether the monetary appropriations were significant.

Table 2

Summary of the 75th Legislature's major spending issues resulting from *Hopwood's* impact on higher education

- SB 1898 authorized emergency appropriations of \$10 million to increase tuition assistance grants provided by the coordinating board and \$2.5 million was allocated to Texas A&M, also for needy students.
- House Bill 1, the General Appropriations Act, reinstated special provision riders in the 1996-97 appropriation's bill expressing legislative priority to recruit and retain disadvantaged students.
- Rider 32, in the General Appropriations Act, required the Higher Education Coordinating Board to recommend funding formula to the 76th Legislature that reward institutions for making improvements in recruiting, retaining and graduating the educationally disadvantaged students.
- The New Horizon Scholarship Fund created by SB 576 was funded by monies originally appropriated to the Disadvantaged Scholarship strategy (C.1.3) in the coordinating board's budget.
- Rider 16 in the comptroller's budget, included in the General Appropriations Act, requires the comptroller to conduct a disparity study to determine whether past acts of discrimination by higher education institutions have created any present effects of discrimination.

Source: House Research Organization (1997d).

Parity

Some advocates of affirmative action attempted to encourage minority students to enroll in Texas universities through legislation that could meet the standard set by the *Hopwood* opinion and the guidelines introduced by Attorney General Morales (House Research Organization, 1997b). In his opinion, Morales stated that race could be used in isolated cases where the state could prove past discrimination and present effects of such past discrimination (Morales, 1997).

In the Texas House of Representatives, the two minority legislative caucuses, the Texas Legislative Black Caucus and the Mexican American Legislative Caucus, met to craft legislation which would require studies to determine disparities in admissions of students. Once identified, these disparities could serve as a basis for admission policies (Foy, 1997). One bill was introduced by Rangel, a member of the Mexican-American Legislative Caucus. The bill required that universities compare their enrollment of minority students to the minority proportion of students graduating from public high schools in Texas. If university minority enrollment proved to be lower, the bill would have allowed universities to use race as a factor for admission. Additionally, the bill would have required that undergraduate schools compare their minority admission numbers with those of minority students receiving high school diplomas. Graduate and professional schools would also be required to compare their minority admission numbers with those of minority students receiving baccalaureate degrees (House Bill 3418, 1997). African-American State Representative Ruth Jones McClendon, Democrat-San Antonio, said: "It's an extra hurdle to spend the money, but what has happened now is that the Attorney General's Office is forcing us to prove that disparity does exist" (Foy, 1997, p. A6).

Morales, however, cautioned that it would be difficult to meet the challenging standards set in Rangel's bill. He noted: "Theoretically it's possible....On a practical matter, it's almost impossible. The bar is very high" (Moreno, 1997a, p. A21).

In the Senate, a discussion on the merits of parity became intense. On a bill requiring the Texas Higher Education Coordinating Board to collect and maintain data on

minority enrollment, minority senators threatened to hold back university funds if university administrators failed to find a way around race-based admissions (Walt & Hughes, 1997). University of Texas at Austin Law School Dean Michael Sharlot responded to this dialog saying that:

We are the victims in the Hopwood case and it is terribly unfair, to say the least, to turn us into the villains....We've had very substantial minority representation in the school for the last two decades. This is the school that has produced more minority lawyers than any law school in the United States. (Walt & Hughes, 1997, p. A37, A40)

University of Texas Chancellor William Cunningham commented:

We are committed to doing everything humanly possible to have a diverse student population at the University of Texas.....We are very disappointed with the numbers. We are doing everything we can to increase the number of minorities and to run a first-class educational enterprise. (Stutz, 1997, p. A33)

A major state newspaper faulted minority senators for placing the blame for low minority enrollment on administrators of the state's flagship institutions. It asserted:

Minority senators can blame the public schools, which are failing to educate too many minority children; they can blame irresponsible or overworked parents; they can blame the students themselves for placing too low a value on education. But the senators miss their mark by blaming the administrators of Texas' top colleges and universities. These educators have worked hard to enroll diverse student

bodies and remain eager to admit ambitious students regardless of race. (“After Hopwood,” 1997, p. A30)

The newspaper noted that a “look at the numbers shows that low minority enrollment has little to do with Texas universities. It has everything to do with what takes place in the lives of minority students before they reach college age” (“After Hopwood,” 1997, p. A30).⁸

By the end of the session, little was recommended on this parity issue. The principal exception was a rider in the General Appropriations Act that directed the State Comptroller and the Texas Higher Education Coordinating Board to conduct a disparity study of higher education institutions.

Indemnification

The final category of legislation addressed liability for admissions decisions. Representative Irma Rangel and Senator Gonzalo Barrientos each introduced legislation to protect state employees who might be held personally liable for decisions made relating to admissions policies involving minority applicants. In an interview, Rangel said that she was concerned about these employees as well as “students who are not agents of the state because students also serve on some admissions committees.” However, this legislation was not well received. Rangel said that she was told that “the State of Texas will indemnify its agent from any lawsuit;” therefore, there was no need

⁸ The paper cited that “every year there are about 34,000 black 18-year-olds in Texas, but only 21,000 graduate from high school. Only 7,500 take the SAT test, essential for admission to selective schools, and less than 2,000 make the minimum score. The number for Hispanics show the same sharply descending curve” (“After Hopwood,” 1997, p. A30).

for her legislation. Though Barrientos' bill received a favorable report from the Senate committee, the bill was never scheduled for a vote by the full Senate.

In summary, though more than 20 pieces of legislation were filed during the 75th Legislative Session—each addressing some aspect of higher education that minority legislators believed would be adversely affected by the *Hopwood* ruling and Morales' interpretation—less than a quarter of them were enacted. The main concern was minority underrepresentation in Texas' institutions of higher education, particularly in light of the projected population changes taking place in the State. Thus, most of the bills addressed *admissions* policies encouraging a diverse student population. But only one bill on admissions policies was enacted. That was House Bill 588. Other legislation attempted to secure state *financial assistance* for high school graduates who attend a public institution of higher education. The General Appropriations Act addressed this request by increasing some of its tuition assistance grants, but there was no consensus on its level of significance. The little interest in *parity* resulted in a directive to conduct a limited disparity study of higher education institutions, which included the collection of data on minority enrollment, including data on recruitment, admissions, retention, and graduation at both the undergraduate and graduate levels. This initiative was included in the General Appropriations Act. Finally, two bills that would have *indemnified state employees* of higher education institutions making admissions decisions failed to gain support.

The above findings indicate that the policymaking process was impacted by the *Hopwood* decision, as well as Morales' subsequent interpretation of it. However, the new conservative political climate largely influenced which legislation passed and which did

not. By the end of the session, affirmative action policies in higher education were eliminated and replaced with race-neutral legislation.

Research Question 3: What conditions within the Texas Legislature favored the final construction of House Bill 588, and what were the final provisions of the legislative policy addressing minority representation in higher education?

It is clear from the above findings that the legislative policymaking process in 1997 was influenced by external forces. The *Hopwood* ruling created input demands on the Texas Legislature when minority legislators perceived that its adverse affects would require a legislative solution. These input demands resulted in the introduction of over 20 pieces of legislation. Meranto (1967) asserted that environmental conditions alone do not produce new policy output; institutional forces are essential in bringing about legislative innovation. The three institutional forces within the Texas Legislature that were key to the success of House Bill 588 were: (1) the initiative and leadership of the Chair of the House Higher Education Committee; (2) the support of the Chair of the Senate Education Committee; and (3) the control held by the Democrats in the Texas House of Representatives.

Chair of the House Higher Education Committee

During the 75th Legislature, the House Higher Education Committee addressed the issue of minority access to higher education in the State of Texas. Consistent with the findings by Kraemer et al. (1996) that public policy gains consideration through the

efforts of key legislators, it was Rangel, Chair of the Committee, who placed the issue on the Committee's agenda by introducing House Bill 588.

Several major demand articulators (i.e., education interest groups, private citizens/constituents, and state agency legislative liaisons) provided input during the committee hearing process. Much of their input was in the form of demands requiring a response. Review of committee documents helps to explain why certain demands were incorporated into the bill and others were not. For instance, Dr. William H. Cunningham, Chancellor of The University of Texas System, was concerned that some of the students granted automatic admission might not be prepared to do college work and suggested that they be required to enroll in a summer enrichment course. In an interview, Rangel said that she accepted his recommendation because she understood the likelihood that some students might not know their academic standing in their graduating class, and other students simply might not have had the option of taking college preparatory courses because their high school did not offer them. She added, "let's face it, when we go to South Texas, we have many school districts that do not appropriate the monies that other very rich school districts do." Rangel said that she accepted Cunningham's proposal on the condition that "everyone, not just the 10 percent" would be permitted to enroll in the summer enrichment courses because she did not want to single out any group of students. Thus, this provision was added to House Bill 588.

In testimony before the House Higher Education Committee, Cunningham further asked that students be required to take college preparatory courses in high school. Dr. Leo Zavedra, Deputy Chancellor of Texas A&M University System, supported this

suggestion. He stated, “I think it’s important that the bill address the high school curriculum. It’s important that high schools and public schools reinforce and focus on providing college bound courses so that the students can better succeed.” In related testimony, Al Kauffman, an attorney for the Mexican American Legal Defense and Education Fund (MALDEF), opposed the inclusion of such a mandate. He pointed out that not all schools are able to provide a wide range of preparatory programs, and some students are “late bloomers.” He said that while some “late bloomers” (juniors or seniors) rank in the top ten percent of their class, they may not have taken the college preparatory courses because they did not anticipate going to college. Rangel did not accept Cunningham’s recommendation. She agreed with Kauffman.

On another provision, Cunningham urged the committee members to reconsider the “timeframe” in which students must decide whether to accept their automatic admission. Cunningham recommended that students be given only one year to decide whether or not they want to pursue a college degree.

Fearing that students would lose a one-time opportunity to go to college, Kauffman voiced opposition of this recommendation. While he understood the logistical problems for the universities, he advised the committee against giving students only one year to take advantage of their high school record. In his testimony, he noted that some students “who have done very well in high school, but because of some other reasons, such as finances or family circumstances, first have to go to a community college or have to wait several years before going back to the University.” Rangel elected to give

students two years subsequent to their high school graduation to accept or reject their automatic admission.

In other testimony before the committee, Zavedra urged the members to “provide adequate financial aid packages to students” who meet the admissions criteria. This request was supported by David Montejano, then-director of the Center for Mexican American Studies at The University of Texas at Austin, who cited statistics indicating that the 10 percent plan would yield greater numbers of minority students. He cautioned that without a component providing financial aid, the bill’s success would be in jeopardy. However, Dr. Michael Olivas, law professor at the University of Houston, disagreed with the emphasis on funding. He believed that the problem with the *Hopwood* ruling was primarily with the admissions process, not with financial aid. Rangel choose not to address the issue of financial aid because it would add to the difficulty of passing the bill.

There were additional issues raised regarding the socioeconomic factors that institutions consider in making admissions decisions. For example, the inclusion of test scores prompted a supporter of the bill to voice his concern. In his testimony, Kauffman noted that standardized test scores should not be among the admissions factors because “the performance on test scores has a tremendous detracting affect and has reduced minority participation in universities, and has also reduced the participation of low-income Whites in universities.” Rangel allowed the inclusion of the applicant’s performance on standardized test to be included among the 18 socioeconomic admissions factors.

Finally, several witnesses testified in support of expanding the automatic admissions percentile. One witness, representing himself, said that he preferred an automatic admissions policy for students ranking in the top 25 percent of their class, not just the top 10 percent. He asked, “What happens to the rest of the class not lucky enough to be in the top 10 percent?” This witness urged Rangel and the committee to consider expanding automatic admission to “the top 25 percent minimally.” A student from San Antonio concurred. The student expressed his support for the bill only if it extends “to more than the top 10 percent of all students, and also includes academically challenging parochial schools.” The recommendation to increase the automatic admission level was rejected.

The above committee input suggests that there was extensive interest in the adoption of access legislation. Recognizing the validity of all the input, Rangel left the bill pending in the committee for one week to make the modifications she felt would increase the bill’s acceptability.

The following week, Rangel offered a committee substitute to House Bill 588. She had acceded to the following major demands: 1) allowing students at least two years to decide whether or not to pursue a college degree, and 2) maintaining the universities’ ability to consider an applicant’s performance on standardized tests.

She had decided that the inclusion of some of the other recommendations might have compromised the bill’s success. For instance, granting automatic admission to the top 10 percent was a challenge in itself. Extending automatic admission to a higher percentage could have opened an entirely new discussion over “limited capacity” in the

already-crowded institutions of higher education. Additionally, without secured funding, topics such as mandated college preparatory courses and increased financial aid could have extended discussions beyond the 140 days allocated to making laws in Texas. Rangel's intent was to keep the bill simple and as palatable as possible. As substituted, House Bill 588 received unanimous support from the full committee. On March 25, 1997, the committee sent the bill to the full House.

Additional evidence further illustrates Rangel's ability to effectively manage unprecedented legislation. She had not only studied this issue in detail and addressed the major concerns before the bill got to the House floor, but she also welcomed an open discussion before the full House.

During the second reading of the bill on the House floor, the sensitivity of the issue led to a two-hour debate. A reporter for the *Houston Chronicle* said that House Bill 588 "drew barbs from several House conservatives who contend it would unfairly discriminate against students who have done well academically but don't meet other admissions criteria" (Hughes, 1997, p. A1).

The *Fort Worth Star Telegram* reported the controversy over the list of socioeconomic factors authorized for use in admissions decisions:

The most criticized provision of the bill mandates that a third tier of students be admitted based on a range of criteria, including a student's socioeconomic background, bilingual proficiency, geographical location and responsibilities outside of school, such as work or helping to raise siblings." (Sanchez, 1997, p. B5)

One of the Republican legislators who strongly opposed this provision of the bill was Representative Frank Corte of San Antonio. In a speech on the House floor he said that the third category “devalues the education process” because admission would be determined by “unrelated academic areas.” Also referring to the 18 factors in the third tier, Representative Charlie Howard, Republican-Sugar Land, argued that students who are White, live in a middle-income-suburban area, whose parents went to college and are not bilingual, would be at a disadvantage because so few of the factors would apply to them, thus diminishing their probability of getting admitted to a university under the bill. “The third category is left to the discretion of the universities,” responded Rangel. “It is their choice to determine which factors they consider important.”

Representative Arlene Wohlgemuth’s, Republican-Burleson, opposed the bill because home-schooled students and those attending unaccredited Christian schools would be left out. During the House floor debate, she argued that these students would be excluded from admissions under the automatic top 10 percent rule and the optional automatic top 25 percent rule because these two sections in the bill apply only to “a public or private high school in this state accredited by a generally recognized accrediting organization.”

While Wohlgemuth’s concern received some sympathy, the solution she sought for home-schooled students would have jeopardized the success of House Bill 588. Though frustrated, Wohlgemuth acknowledged that she had already spoken with Rangel about granting automatic admission to home-schooled students, and also noted that this

practice “would not be fair to the other students” because of the possibility that all home-schooled students could be considered in the top 10 percent of their one-student class.

Representative Jerry Madden, Republican-Richardson, was concerned about how the bill would affect his legislative district. Noting that disparity exists between school districts, Madden argued that House Bill 588 would be a “discriminatory bill against top performing school districts,” because “the lower performing school districts, were going to get 10 percent also.” He added that:

those of us who have top performing school districts in the state, we’re going to, in fact, lose some of our students who may not rate in the top 10 percent, but academically will be known by the universities to be high performing students; [they] are not going to get the same opportunity and the same automatic acceptance.

Representative Charlie Howard, Republican-Sugarland, echoed Madden’s opposition, saying that the bill was contradictory to the *Hopwood* case that prohibited the giving of preferences. He asked his colleagues to think about when they would return to their districts and begin to receive calls from parents complaining that they can’t get their children into a major university in the State of Texas. Specifically referring to the top 10 percent automatic admissions section of the bill, he warned:

if we pass this bill, the reason’s going to be because we have an inequitable group taking up a significant portion, 43.1 percent of the slots. It’s a sheer numbers

game. We're going to have diversity. This is a very diverse state. We have diversity now, we're going to have diversity in the future.⁹

Opposition to the bill also resulted in the introduction of two House floor amendments, both considered unfriendly by the author of House Bill 588. Review of these two amendments will be found later in this chapter.

Representative Ted Kamel, Republican-Tyler, a member of the House Higher Education Committee, was the only Republican who spoke in support of House Bill 588 on the House floor. He said, "this is a solution to *Hopwood*." He added, "We're not micro-managing admissions standards. The bill is asking universities to consider other subjective criteria when making admissions decisions."

At the end of the debate, Rangel made no attempt to make any changes. In her closing remarks, Rangel simply stated:

This is not a bill that was drafted overnight. We have been working since last June on this bill. We have been working along with Dr. Ricardo Romo from The University of Texas at Austin who is a historian; Dr. David Montejano who also is an expert in history; Professor Gerald Torres, a law professor at The University of Texas Law School; and some of the chancellors from the universities. We've been working with them since last June. We've been working with Al Kauffman from the Mexican American Legal Defense Education Fund. We've been working with Attorney General Dan Morales also. And we have been working

⁹ According to his statistics, Howard also cited that 85 percent of the admissions slots are accounted for, based on specific criteria in the bill, leaving only 15 percent for the remaining students. He told his colleagues, "You're going to have a difficult time explaining that."

with the Coordinating Board as well. And we have been working with a representative from the governor's office as well; and then, Professor Michael Olivas, who is a professor at the University of Houston Law School who is the expert not only in the State of Texas but who is an expert in the country on higher education law.

Again, emphasizing that the bill was a collaborative effort she said, "these are the people who have contributed to this bill. They are the ones who composed the bill. I am only here to explain the bill." Making one final point, Rangel said that the bill did not show preference for "one student over another....We're making reference to high schools from Plano. We're making reference to high schools from Lubbock to Dallas....We're not saying high schools from South Texas, we're saying from each high school." In a 77-68 vote, primarily divided along party lines, the full House passed House Bill 588 to third reading (Record Vote #153, 1997).

On the third reading of the bill, Kamel again tried to make an appeal to his Republican colleagues to support House Bill 588 by telling them "the governor's office is not in opposition to this bill." According to Rangel, Kamel wanted to say that the governor supported this bill, but he was told he could only say that the governor did not oppose it. In an interview, Rangel recalled that Kamel's message did not change many votes. A recorded vote was not available on third reading to allow for an comparative analysis of the two votes (House Journal, 1997b). Upon the third and final passage in the House, the bill was sent to the Senate for its consideration.

It is important to note that Rangel's contributions extended beyond her use of her power as Chair of the House Education Committee and her firm advocacy of the bill before the full House. She also put into place five key strategies that paved the way for House Bill 588. Because the passage of the bill cannot be fully explained without a detailed review of these strategies, they will be presented in the final research question.

Support of the Chair of the Senate Education Committee

A second institutional force that favored the enactment of House Bill 588 was the support from Senator Teel Bivins, Chairman of the Senate Education Committee. Bivins' contributions began before House Bill 588 had been referred to his committee. The Republican Senator had already committed to developing a response to the *Hopwood* ruling. In fact, he had joined Senator Royce West, Democrat-Dallas, and Senator Gonzalo Barrientos, Democrat-Austin, each of whom had a different view about affirmative action policies than he (Lee, 1997). Despite this difference, they drafted Senate Bill 1419 together. This bill was more commonly referred to as the "50, 40, 10 percent plan" because of the three-tiered admissions system the bill proposed.

Bivins said, "[t]hese senators and I have worked on achieving a race-neutral admissions policy for our state universities....I believe this legislation addresses concerns raised by the Hopwood decision in a race-neutral fashion" (Fikac, 1997, p. A31). West also emphasized their collaboration. He stated "It's a joint effort to zero out the impact of Hopwood and approve upon the ability of all children in Texas to get a higher education" (Lee, 1997, p. B9).

Despite Bivins' co-sponsorship, some of his Senate Republican colleagues had a different view of the bill. Senator Steve Ogden, Republican-Bryan, said the bill was "overly prescriptive...it's not fair for all in the state" (Tolley, 1997, p. A24). Echoing Ogden's opposition, Senator Robert Duncan, Republican-Lubbock, said it was bad public policy to prescribe admissions guidelines for the board of regents (Tolley, 1997). Senator Troy Fraser, Republican-Horseshoe Bay, said, "What about the person who has raised themselves up by their bootstraps and their children are now starting to go to college?...We're only addressing economically disadvantaged" (Moreno, 1997b, p. D12).

Though the Senate bill would not prevail in the end, it did help prepare the way for House Bill 588. During the deliberations over the Senate Bill 1419, the Senate settled controversial issues such as test scores, funding, and the race-neutral language. Therefore, when the House bill arrived, it moved through the Senate without much opposition. Much of the credit is given to the Senate co-authors, West, Barrientos, and Bivins.

Senator Bivins' support of access legislation was particularly evident when House Bill 588 was referred to his committee. While he could have utilized various tactics to bury this legislation for the duration of the session and bargained for the passage of Senate Bill 1419, he instead welcomed the House bill. During the bill's public hearing process, he permitted an open discussion on any issues of concern. However, his willingness to approve the bill's passage from his committee helped ensure that the other committee members would also vote favorably, despite any individual concerns.

For instance, one of the concerns expressed during the Senate Education committee hearing was the need for additional funds. Senator Royce West, a committee member, said that the passage of House Bill 588 would not be the “cure all,” for the *Hopwood* effect. He said that financial aid remained a critical issue.

Another member, Senator Troy Fraser, Republican-Horseshoe Bay, also voiced concern over a statement that he had heard about capacity. He said that after Senate Bill 1419 (the Senate cousin to House Bill 588) left the Senate he had heard that, “if we mandated that everyone in the top 10 percent of the class automatically have admission...[and if] all the top 10 percent decided to go to A & M, they couldn’t handle all of those kids.” He asked, “Are we getting into a dangerous area mandating that they automatically be [accepted]?” Although, there was discussion that helped clarify this matter, it was stated that if such a problem did arise, the bill gives the Texas Higher Education Coordinating Board rulemaking authority to address the issue. Furthermore, it was stated in committee that The University of Texas had previously indicated that neither the Senate bill nor the House bill would create a capacity problem.

After being considered in the Senate committee the for a few days, legislative documentation shows that on May 2, 1997 the bill was reported out of committee without amendments.

Bivins demonstrated his support of House Bill 588 again when it was scheduled for a vote on the Senate floor. When Barrientos, the Senate sponsor, introduced the bill to the full Senate, an unexpected and unfriendly amendment was offered. Legislative

documents revealed that almost spontaneously, Bivins stood up and utilized his knowledge of Senate rules to defeat the amendment.

In an interview, Rangel said that she was not at the capitol when House Bill 588 was brought up in the Senate on second reading. She said that her staff had to put her call on a speaker phone allowing her to hear the Senate floor proceedings. She said:

Senator Barrientos brought it [House Bill 588] up as the Senate sponsor of the bill, quickly an amendment was recognized by the lieutenant governor. The amendment was by Senator Fraser. And that amendment had to do with home schooling. When that amendment was brought up, Senator Barrientos said: “Mr. President, I was not told about this amendment.” And I became very concerned that maybe this was going to prolong and delay [the bill] because maybe the debate on that amendment might cut it off. I became very concerned. Senator Bivins stood up and he called a point of order on the amendment.

According to legislative records, the point of order was well taken and the motion was sustained. With no further discussion, a vote was taken. The bill passed in a 27–4 vote (Senate Journal, 1997).

Remembering the details of the May 8, 1997 Senate floor debate, Rangel stated in an interview:

Senator Bivins killed the amendment. Senator Bivins saved the bill. And then the bill passed with only four or six Senators voting against it. Everybody else voted for it because Senator Bivins killed that amendment. I guess they [Republicans]

knew who their leader was, and they followed Senator Bivins. I have to give him credit.

Consequently, Rangel credits Bivins with having saved the bill on the Senate floor and for having encouraged Republican support for the bill in the Senate.

Since action in the Senate resulted in no changes to the bill, a conference committee was not needed to resolve the differences. House Bill 588 was sent directly to the governor for his signature, with almost one month still remaining in the session.

Democrats Hold Control in the House

In 1997, the Texas House of Representatives was comprised of 82 Democrats and 68 Republicans. Legislative documents suggest that the strength of the Democratic vote in the House was the third force within the Texas Legislature that helped secure the passage of House Bill 588.

The Democratic majority first helped defeat an attempt to attach two unfriendly amendments to the bill on the House floor. The first amendment would have granted automatic admission to students with a standardized test score in the top 10 percent for the year in which they took the test. The second amendment would have broadened the scope of the bill and added additional automatic admissions tiers.

Record Vote #150 in Table 3 indicates that in a 71-69 vote, the “motion to table” the vote on Amendment #1 failed, because 10 Democrats voted to permit its consideration. In addition, Record Vote #151 shows that Democratic opposition defeated Amendment #1 in a 76-68 vote and its proposal to complicate House Bill 588 by adding standardized tests to the 10 percent rule.

Table 3

House Vote on Amendments to House Bill 588 - Second Reading

	AYE	NAY	PNV	ABS*
<i>Record Vote #150: Amendment #1 – Motion to Table</i>				
Democrats	65	10	2	6
Republicans	4	61		2
Total Vote	69	71	2	8
<i>Record Vote #151: Amendment #1</i>				
Democrats	6	72	2	3
Republicans	62	4		1
Total Vote	68	76	2	4
<i>Record Vote #152: Amendment #2 – Motion to Table</i>				
Democrats	73	6	1	3
Republicans	5	62		
Total Vote	78	68	1	3
* includes members with no recorded votes and those listed as ‘excused’				
PNV = present not voting ABS = absent				
Sources: <u>Record Vote #150</u> (1997), <u>Record Vote #151</u> (1997) and <u>Record Vote #152</u> (1997).				

Record Vote #152 shows that a majority of Democrats voted to support the “motion to table” the vote on Amendment #2 in a 78-68 vote. The data do not reveal why some Democratic legislators voted against the “motion to table” the vote on Amendment #1 but supported the “motion to table” the vote on Amendment #2.

When the vote on second reading of House Bill 58 was finally taken, Table 4 shows that legislators voted primarily along party lines. As seen on Record Vote #153, five Democrats voted against the bill and five Republicans voted for the bill. Although

the four members who were reported “absent,” and the one member reported “present not voting” were all Democrats, there were still enough Democrats present in the House to secure the bill’s passage to third reading. On third reading, the vote was not recorded (House Journal, 1997b).

Table 4

House Vote on House Bill 588 by Political Party - Second Reading

	AYE	NAY	PNV	ABS*
<i>Record Vote #153: Passage to Engrossment</i>				
Democrats	72	5	1	4
Republicans	5	63		
Total Vote	77	68	1	4
* includes members with no recorded votes and those listed as ‘excused’				
PNV = present not voting ABS = absent				
Source: <u>Record Vote #153</u> (1997).				

Commenting on the Democratic legislators who supported the bill, Rangel said that those who voted for the bill realized the importance of an education for all Texans, and understood the needs of minority students. In an interview, Rangel said that the five Democrats who voted against the bill did so because some

members, Republicans and Democrats, are very concerned primarily about getting reelected, not about doing the right thing. And, that’s their priority. And they probably come from a very conservative district and had they voted for this, it would be educating minorities, and that probably would not be very acceptable in their district. So they are more concerned about getting reelected. The right thing

would have been to have voted for the bill, but they wanted to be reelected instead. That's why they voted against the bill.

One Democrat apologized to Rangel for voting against House Bill 588. In an interview Rangel said that legislator told her, "I'm very sorry I had to vote against your bill...if I had voted for your bill, you would have a Republican sitting here." Rangel responded, "what difference does it make. If you are a Republican you would have voted against it. You are a Democrat and you voted against it. I really don't care who sits in that chair, whether it's you or a Republican."

The analysis above shows that Republicans overwhelmingly opposed the bill. Attempting to explain this action, Rangel said "they saw it as another affirmative action program, and I think that's why they voted against it." She added: "We didn't have that leadership of the Republicans in the House to let them know better."

Then-Governor George Bush's legislative director, Terrell Smith, had his own explanation. In an interview, he said:

What you had in the House is so many of the Republicans [who] represented just suburban school districts and those are the ones that if anybody was going to be hurt by this, it was going to be them. Because they're the type of school districts in which 30 or 40 percent of their students would score high enough on the SAT and take all the honors courses and do all the things that would get them into UT, that now are not able to get into UT as a result of the 10 percent rule. At least, that's the perception. There may be some truth to it. And so they come there with, like everybody comes: What can I do for my constituents? And so they just

felt...that it would knock out some of the students they felt had scored very high, could do the work, and perhaps were smarter or had better grades or better SAT scores than some from poor school districts and inner-city school districts. I think they thought it was unfair. So that was, as I recall, the nature of the debate.

Although the majority of the Republican members opposed the bill, five Republicans voted for House Bill 588. Rangel attributes their support to the personal friendship she has with each of these members, but more so, she said it was because of their compassion and interest in ensuring that all students have access to an equitable education. Unfortunately, she said, one of the five members lost his reelection after that session.¹⁰

The statements above suggest that the composition of a legislative district may have had an influence on a legislator's vote. Without a detailed analysis on each legislative district, it is difficult to determine the true affect. Table 5 only compares the votes between those legislators whose district is comprised of "part" of one county and those who represent more than one county. Based solely on this information, the findings show that this factor did not have a significant affect on the outcome of the vote. Perhaps a more fundamental comparison would have been to examine various factors within the school districts (e.g., test scores, property wealth, minority enrollment, etc.) in each legislative district. Such detailed information was not readily available at the time of this study.

¹⁰ After the 75th Legislative Session, Representative Kamel lost his bid for reelection. In an interview, State Representative Pat Haggerty, Republican-El Paso, said that Kamel's loss had more to do with a previous statement to only serve four terms.

Interestingly, however, all 5 Republican legislators who voted for the bill represented a district composed of only “part” of one county. These urban-type counties were: Tarrant, Dallas, El Paso, Lubbock and Smith. Similarly, all 5 Democrats who voted against the bill had districts that included more than one county, ranging between 5 to 17 counties. These legislators resided in: Holliday, Portland, Rockdale, Mt. Vernon and Voss. Without additional information, however, it is difficult to reach any definite conclusions.

Table 5

House Vote on House Bill 588 by District – Second Reading

	AYE	NAY	PNV	ABS*
<i>Members' District Includes "Part" of One County</i>				
Democrat	52			3
Republican	5	42		
<i>Members' District Include More Than One County</i>				
Democrat	20	5	1	1
Republican		21		
Total Vote	77	68	1	4
* includes members with no recorded votes and those listed as 'excused'				
PNV = present not voting ABS = absent				
Sources: <u>Record Vote #153</u> (1997) and <u>Texas House Directory</u> (1997).				

Another characteristic that could have potentially affected how legislators voted on House Bill 588 was their tenure in the legislature. “Generally speaking, members rank lower on the party loyalty continuum as their seniority increases” (Davidson, 1969, p. 159). However, Table 6 shows that there was no apparent evidence indicating that tenure affected the outcome of House Bill 588 since most legislators voted along party line.

Table 6

House Vote on House Bill 588 by Tenure – Second Reading

	AYE (D)	AYE (R)	NAY (D)	NAY (R)	PNV	ABS*
<i>Members by Tenure</i>						
<i>Freshman</i>	11			14		1
<i>1- 5 years</i>	24		2	24		
<i>6-10 years</i>	20	5	2	16		3
<i>11-15 years</i>	6			7		
<i>16-20 years</i>	8		1	1		
<i>21 years plus</i>	3			1	1	
Total Vote	72	5	5	63	1	4
* includes members with no recorded votes and those listed as 'excused'						
PNV = present not voting ABS = absent D = Democrat R = Republican						
Sources: <u>Record Vote 153</u> (1997) and <u>Texas House Directory</u> (1997).						

The breakdown of the vote by tenure shows that, as expected, all of the freshman legislators voted along party lines. Members having between 1-5 years of tenure also voted primarily along party lines, with the exception of two Democrats who voted against the bill. In the 6-10 year range, two other Democratic members voted against the bill, whereas five Republican members voted for the bill. Interestingly, only one member between 16-20 years of seniority broke party rank. This Democratic member voted against the bill. And, four of the five most senior members voted along party lines (one was present but not voting). In summary, it appears that party clearly outweighed tenure in determining a legislator's vote.

A third characteristic to be compared was gender. In 1997 there were 30 women in the Texas House of Representatives: 19 were Democrats and 11 were Republican.

Most women legislators voted along party lines with the exception of one Democratic female legislator. Of the 120 male legislators, 63 were Democrats and 57 were Republican. Four of the male Democrats voted against the bill, five male Republicans voted for the bill, four were absent and one was present but did not vote. The majority of the men and women voted according to their party affiliation.

Ethnicity was another characteristic evaluated in this study. Table 7 indicates that almost all African-American and Mexican-American¹¹ legislators supported House Bill 588. While the minority members represented only 28 percent of the total House legislative body, they represented over 50 percent of the total Democratic vote. Thus, their support was significant.

A possible explanation for these members' votes was their desire to provide educational opportunities to constituents who would otherwise be deprived of a higher education because an under-funded public school district had failed to prepare them adequately for admission to college. A House report noted the correlation between minority performance on tests and low-wealth school districts and indicated that some:

observers trace gaps in minority performance not to the test but to the system of education itself....Those in richer areas can usually spend more per student than those in poorer districts, where minority students are disproportionately concentrated. While the state has attempted to level financial resources among

¹¹ The 1997 Mexican American Legislative Caucus Directory shows that 25 of its 27 Mexican-American members represented legislative districts with more than a 60 percent minority constituency. Representative Irma Rangel was the only Mexican-American legislator not registered in the caucus directory that year (Mexican American Legislative Caucus Directory, 1997).

school districts, wide gaps remain in funding per student, with clear effects on the quality of education. (House Research Organization, 1998, p. 13)

Table 7

House Vote on House Bill 588 by Ethnicity – Second Reading

	AYE	NAY	PNV	ABS*
<i>Members by Ethnicity</i>				
<i>African American</i>	14			
<i>Mexican-American</i>	25	1**		2
<i>White</i>	38	67	1	2
Total Vote	77	68	1	4
* includes members with no recorded votes and those listed as ‘excused’				
** this was the only Republican minority legislator; all other minority legislators were Democrats				
Sources: <u>Record Vote #153</u> (1997) and <u>Texas House Directory</u> (1997).				

Legislative records show that all but one member of the House minority caucuses, Texas Legislative Black Caucus and Mexican American Legislative Caucus, voted for House Bill 588. The one exception was a Republican, Mexican-American legislator, who voted for the bill in the House Higher Education Committee, but voted against the bill on the House floor. As a member of the House Committee, this legislator supported the bill in order to enable it to reach the floor; however, the legislator voted against the bill on the House floor. The legislator represented a district with a Hispanic population of only 8.9 percent (Mexican American Legislative Caucus Directory, 1997).

The vote in the Senate was different. In contrast to the vote in the House, which was primarily along party lines, a majority of the Senators supported House Bill 588. The bill was passed by a 26-5 majority vote.

Why did House Bill 588 receive such overwhelming support from Republicans in the Senate? Two possible answers were advanced: (1) senators represent more diverse districts than representatives, and (2) Senator Teel Bivins' leadership. The first answer was given in an interview by then-Governor Bush's legislative director, Terrell Smith, who said that senators:

have such large districts that they have lots of different people in their districts. Not just more minorities perhaps, but poor school districts, rich school districts, small school districts, big school districts, and they tend to come to the legislature feeling that all of those need to be represented.

The second reason—Bivins' leadership—was provided by Rangel, who credited Bivins for the Senate Republican vote. She had observed and worked closely with the Senator throughout the session. In an interview, she said, "you have most of the Republicans voting for the bill. That's [due to the] wonderful leadership of Senator Teel Bivins."

Bivins also acknowledged his overall influence in the Senate. In another interview, he said:

as chair of the committee and as a Republican, and someone who I think they respect, I think that once they saw my name as co-sponsor of the bill, it went a long way to allay fears that it was something that was going to perpetuate the

quota system or race-based admission system. And so I don't recall any real firm opposition.

Final Provisions of House Bill 588

As enacted, House Bill 588 (1997) amends Chapter 51 of the Education Code in the State of Texas. The most significant provisions added into this law relate to: an automatic admission at all institutions, additional automatic admissions at selected institutions, and 18 other socioeconomic factors that could be used in admission decisions. The following sections detail each of these three items as contained in House Bill 588, as well as four other related parts of the bill.

Automatic admission: All Institutions

House Bill 588 requires that the state's institutions of higher education automatically admit first-time freshman students who graduate in the top 10 percent of their high school class. Students are entitled to automatic admission during the two years subsequent to their high school graduation.

The institutions are further mandated to determine whether an applicant is in need of preparation for college-level work. The bill allows institutions to require students to enroll in designated enrichment courses and orientation programs. Students not found to need additional preparation may voluntarily enroll in the enrichment courses.

Additional Automatic Admissions: Selected Institutions

An optional automatic admission is provided for students graduating in the top 25 percent of their high school graduating class. Each academic year, the governing board of each institution must determine whether to adopt such a policy.

Other Admission

Institutions are required to consider the following socioeconomic factors for students who do not qualify for automatic admission:

1. the academic record of the applicant;
2. the socioeconomic background, including the family's household income, and the parents' level of education;
3. whether or not the applicant would be the first generation in the family to attend or graduate from college;
4. the applicant's bilingual proficiency;
5. the financial rank of the applicant's school district;
6. the performance level of the applicant's school as determined by the Texas Education Agency;
7. the applicant's responsibilities while attending schools, e.g., whether the applicant has been employed, helped raise children, or other such factors;
8. the region of residence;
9. whether the applicant resides in a rural, urban, central city, or suburban area of the state;
10. the applicant's performance on standardized tests;
11. the applicant's standardized tests performance compared to other students of similar socioeconomic backgrounds;
12. whether the applicant's school was under a court-ordered desegregation plan;
13. community involvement;

14. extracurricular activities;
15. the applicant's interest in a specific field of study;
16. personal interview;
17. the applicant's admission to an out-of-state institution; and
18. any other factors deemed necessary by the institution.

While an institution may consider additional factors, it must publish in its catalog a list of the factors it intends to use no later than one year before applications are first considered. The law states that this section does not apply to institutions that have an open enrollment policy.

Report to Coordinating Board

To monitor the composition of each entering class of students, institutions are required to submit an annual report to the Texas Higher Education Coordinating Board. The report is to include a demographic breakdown including the race, ethnicity, and economic status of the students admitted.

Rulemaking

Authority was granted to the Texas Higher Education Coordinating Board to adopt rules relating to the operation of admissions programs, the identification of eligible students and the reporting requirements.

Application of Admission Criteria to Other Programs

This section requires that institutions or medical and dental units offering admissions to undergraduate transfer students, graduates, postgraduates or professional

programs must adopt an admissions policy for their respective programs. The policy must be published and available to the public.

Scholarships and Fellowship Awards

An institution or unit offering scholarships or fellowships must adopt a policy describing the factors used in making an award. The policy must be published and available to the public.

House Bill 588 regulations became effective in the fall term or first semester of 1998.

Analysis of Outcome

Regarding House Bill 588 being signed by the governor, Senator Teel Bivins said in an interview:

I think Irma and the minority members were very pleased that it passed. But frankly, I do think that the Republicans were very pleased that it passed because it got at a social problem in a race-neutral fashion....I think the Democrats perceived that it accomplished a major advance for minority Texans. And, I think Republicans agreed that it did. But, it did so in a way that didn't pit Brown against White or Black against White. It did so in a race-neutral fashion.

Echoing similar sentiments, Terrell Smith, the governor's legislative director, said in an interview that everybody claimed victory. He also noted:

Obviously, Irma claimed victory, I don't know necessarily for herself, but I think for her constituents and for minorities; but certainly we claimed—I think we in this office, and Governor Bush has a great claim to victory, and he has touted this

bill and the top 10 percent plan as a solution to a situation that we as Republicans can embrace as a way to make sure that there's diversity and fairness in our universities...because we do it without looking at the color of your skin. We look at your achievement.

Representative Rangel also was proud of the accomplishment. In an interview, she said that in:

Twenty-three years, I have never been to a signing of any of my bills. I went to this one. And I had every member that contributed—the experts. Michael Olivas was there. David Montejano was there. Gerald Torres was there. All those who had contributed to the idea and drafting the bill were invited to be there. I was not there by myself claiming glory or victory or anything else because it was those guys, those experts who had done it.

One newspaper praised House Bill 588 for giving minorities a lift. Though the paper didn't consider the legislation a perfect fix:

it definitely represents a constructive response to *Hopwood*. And such a response is urgently needed.... If we don't want to lose our brightest and best minority students to out-of-state colleges, more initiatives along the lines of Rangel's will be essential." ("Living with Hopwood," 1997, p. A18)

In summary, the preceding findings show that three institutional forces were instrument in ensuring House Bill 588's success: Chairman Irma Rangel's leadership, Chairman Teel Bivins' support and the Democratic vote in the House. It is clear that Rangel, as Chair of the House Higher Education Committee, successfully managed the

input provided by the major demand articulators. Each of these groups and individuals participated in the legislative process by providing their personal or professional input in the development of House Bill 588. As author of the bill, Rangel determined which input to accept. When the bill was brought for a vote before the full House, the Democratic legislators were generally supportive of the bill. Since a majority of the House members were Democrats, the bill passed. Other characteristics such as the compositions of House legislative districts, tenure and gender had little to no affect on the final outcome of the vote, with the one exception of ethnicity because the majority of the minority legislators were Democrats.

In contrast to the House experience, the bill received a majority of the votes in the Texas Senate from both Democrats and Republicans. One reason is attributed to the fact that the Senate had already debated and passed Senate Bill 1419, which also intended to promote diversity in higher education. It was speculated that senators may have also been influenced by the heterogeneity of the districts that they represent, which include a broader constituency due to their larger size, unlike state representatives whose districts are smaller and more likely to be homogeneous. Finally, Rangel also gave credit to Bivins who provided critical leadership among his Republican Senate colleagues.

The enacted version of House Bill 588 implemented a uniform admissions system in Texas where: (1) automatic admission is granted to students in the top 10 percent of their graduating high school class; (2) an optional automatic admission is allowed for students graduating in the top 25 percent of their class; and (3) universities are provided a

list of socioeconomic factors to use in considering students not qualified for automatic admission.

Research Question 4: What key strategies did the author of House Bill 588 implement to facilitate the development and passage of the bill?

Five key strategies used by State Representative Irma Rangel, author of House Bill 588, seemed potentially important to the bill's approval. Question four was designed to examine how these strategies aided in the passage of the bill, which was considered major innovative legislation in Texas.

When Rangel began working on a response to the *Hopwood* ruling, her proposed policy changes were highly political and strongly criticized. Her recommendations were perceived to benefit some students to the disadvantage of others. However, by the end of the session, Rangel had succeeded in enacting a new admissions policy. For this enormous feat, the interview respondents identified Rangel as the champion of House Bill 588.

What made Rangel effective? Interviewees identified the following factors: tenure in the legislature, chairmanship of the pivotal House committee, knowledge of how the system works, effective use of her power, influence over her colleagues, and understanding of parliamentary procedure.

Senator Teel Bivins, Chairman of the Senate Education Committee, who worked with the representative for many years attributed Rangel's success to some of the same reasons. In an interview he said:

she's been around the legislature for a long time and she knows how the system works. She's the chair of a committee and she knows how to use her power as the chair of that committee. But also she used the skill basic of every good legislator, which is the ability to communicate in selling your ideas."

He added:

It's a marketplace for ideas. And it's competition to see who can sell their ideas. And she has some fairly persuasive skills. And parliamentary procedure...she uses it well. And then just her having been around here for a long time; she has good relationships and it's a relationship business.

When asked in an interview whether a less tenured legislator would have been as successful as Rangel, Terrell Smith, then-Governor Bush's legislative director replied:

It'd be hard. Part of it is just that she's been here a long time. She's fought many, many battles....And then everyone knew that she cared about the issue. She cared greatly about the issue. So you'd never know, and I'd like to think that the issues are bigger than the personalities, but the personalities up here mean a lot. And, where a member with less experience perhaps would have messed up is in just knowing where to draw the line.

Strategies

As the above statements suggest, there were various factors that contributed to the development and success of House Bill 588. However, from Rangel's personal comments during an interview, as well as the interview comments from some of her

legislative colleagues and other participants, five well thought-out strategies emerged, which were focused on securing the passage of the bill.

First, Rangel sought the advice of experts in the area of higher education. In an interview she said “I had three different groups of meetings.” She noted that one group included:

a meeting with Attorney General Dan Morales, along with Al Kauffman, who is the general counsel for the office of MALDEF in San Antonio, and myself. The other group consisted of professor Gerald Torres, who at that time was associate dean of the law school in Austin, at The University of Texas in Austin, and Michael Olivas who is also a law professor at the University of Houston Law School, along with, in two of those meetings, I invited Terrell Smith to come as a representative of the governor.

The third group consisted of Dr. Ricardo Romo, Vice Provost at The University of Texas at Austin; David Montejano, then-director of the Center for Mexican American Studies at The University of Texas at Austin; and Dr. Jorge Chapa, from the LBJ School.

In an interview, Montejano said that in the small group meetings, just as he had done in the statewide forums, he shared his recommendation that universities be required to automatically admit all students in the top 10 percent of their high school graduating class. He acknowledged that he had gotten this idea from a policy previously practiced at The University of Texas. Montejano speculated that perhaps the University did away with this policy because they wanted “a more holistic admission process.” But he stated that since admissions policies were an administrative decision, the University could have

easily reenacted the “top 10 percent plan.” He also understood that fear of being blamed for circumventing the *Hopwood* ruling may have inhibited their decision making. No matter what reasons caused the University to abandon this policy, he said that the top 10 percent policy made a great deal of sense to him. He believed that students who have “proven themselves over three or four years in high school...should have a chance to come to UT Austin.”

During these meetings, Montejano advocated that this plan would maintain diversity in higher education. He would say: “this is going to work because of the geographic concentration and segregation of Mexicanos and Blacks in the State.” In justifying his premise to the group, he noted that:

We didn’t really know what the level of segregation is in this state. So, I said let’s assume that it’s 50 percent segregated. In other words, if 50 percent of the Mexicanos go to segregated schools, 50 percent of the Blacks go to segregated schools. What would that mean in terms of a top 10 percent plan if it was in effect today? If everybody came who I thought could come, we would easily double the numbers [of minority students].

Recognizing that any inaccuracy would discredit House Bill 588, Rangel did not accept his speculation. She knew that hard data was needed if she expected to convince her colleagues in the Legislature. In an interview, Montejano added that Rangel told him: “I want the real numbers. Show me the real numbers. This sounds very good, but I want the real numbers. Go out and do the research and come back.”

Kauffman also shared his solution to the *Hopwood* ruling. In an interview, Montejano, who participated in the smaller group meetings, stated that:

Al Kauffman presented a 15 variable plan. All these variables have to be considered in admissions. None of them have to do with race, but they have to do with things like: Are you bilingual? Did you work your way through school? Do you come from a low-income family? Are you the first generation to go to college?

Input provided by both Montejano and Kauffman—who were actively involved in devising a solution to *Hopwood* and adamant about their proposals—was accepted by Rangel. In fact, these two recommendations became primary components of House Bill 588. When the draft of the bill was approved by everybody attending the meetings, Rangel filed the bill in the Texas House of Representatives. That day was January 21, 1997, about one week after the 75th Legislature had convened.

The second strategy that Rangel identified as critical was to ensure that the governor's office would support the bill. Rangel stated in an interview, "I knew that was going to be the last step to be taken, that it [House Bill 588] had to be signed by the governor....I was trying to follow the process," she said.

In an interview, Terrell Smith said that he was the governor's liaison with the members of the Texas House of Representative and the Texas Senate and that some five to seven months before the 75th Legislature convened, Representative Irma Rangel and others were dealing with the effects of the *Hopwood* decision that had recently been handed down. He also confirmed that Rangel set up a series of meetings in her office

with people from her district, university professors, and others. He said, “she called and asked that I go down and attend. And so I just went mostly as an observer from the governor’s office to her office and listened in on the kind of things they were tossing around.”

Smith believed that Rangel had the confidence to call on him because of their past relationship. He had served as a member of the Texas Legislature with her for about 10 years. Smith figured that she was:

just checking with me to see what the governor could go along with; to know if he was willing to work with them and stuff like that. And I think, during that period of time, we pretty well just kind of kept the doors open. We didn’t commit to any particular plan....[O]ne of the things that I was especially interested in, and I think the governor was, in fact, I know the governor was, that whatever we do be race-neutral.

The invitation to include someone from the opposing political party, however, was met with some criticism. When asked by some of her small focus group members about why she invited someone from the governor’s office, Rangel replied, “because in my twenty some-odd years here, I discovered that a governor can veto bills!”

While there was agreement that the governor did not play an active role in the enactment of House Bill 588, his passive affirmation of the legislation was valued. A key staff member who closely monitored the development of the bill said, “the governor’s role was limited.” The staff member added that the governor was initially:

neutral on the issue and wasn't going to address it. I think after, at the urging of some of the University chancellors and Representative Rangel, ultimately he did give his assent to [House Bill] 588 and said that he would not veto it, and in fact would sign it. While it wasn't strong support necessarily, it was the support necessary to get the bill through.

The third strategy used by Rangel was to keep the bill simple. Numerous respondents recognized this strategy as a primary reason House Bill 588 received more support than similar legislation. In an interview, Smith stressed the importance of this decision. He said "I think she recognized that it had to be fairly simple to understand." Unlike the Senate plan that was introduced, Smith noted, "I just remember it was like 10 percent this and 20 percent that, and just all kinds of things that we didn't care for."

Senate Bill 1419 was filed on March 13, 1997, almost two months after House Bill 588, and was known as the "50, 40, 10" percent plan. The co-authors of the Senate bill included Senators West, Barrientos, and Bivins.

In trying to gain the House Higher Education Chairman's support for the Senate bill, Senator West called Chairman Irma Rangel. In an interview, Rangel recalled, "I was called by Senator West to his office, and he asked me to support the 50, 40, 10 plan." Though she said to him that she would look at his bill, she noted, "I did not commit to the 50, 40, 10 because the 50, 40, 10 was very confusing. It was not going to have a clear-cut chance of being implemented easily with everybody recognizing what was going to be done." Rangel said that the top 10 percent students "were going to be lost in the group consisting of the 50 percent and in the group consisting of the 40 percent," and the bill

“would probably have some loopholes that would allow a lot of opportunities for the circumventing of this bill.” On the contrary, she said “our bill was very simple. It just said the top 10 percent, period, of every high school in the State of Texas, were going to be automatically admitted without consideration as to the scores on their SAT or the ACT.”

As Chair of the Higher Education Committee, Rangel made the decision to hold back the Senate bill. The House Rules state that “[t]he chairs of committees determine if and when a bill will be considered, although they are required to consult with the committee members on the work schedule and the order of consideration of matters before the committee” (House Research Organization, 1999, p. 3). Rangel stated in an interview, “I sat on the 50, 40, 10 bill.... I wanted a very simple bill that the universities could understand exactly what they had to do.”

A member of Senator Barrientos’ senior staff who was analyzing the bill also agreed that Senate Bill 1419 was overly complex. The staffer said:

the Senate had drafted an alternative to the companion to House Bill 588. The Senate kind of basically went off on a whole different track...using the same basic idea and concepts contained within [House Bill] 588 but actually it was much more complex; it had a three tier system as opposed to a two-tier system with automatic admissions and, lots of exceptions and things that, really, just made it a very difficult bill to understand and to administer, so we wasted some time in the Senate negotiating that bill. We wasted some time in the Senate seeking to appease many different people. And that’s mainly because of the

political makeup, many more conservatives in the Senate who were unwilling to accept a strong alternative to affirmative action....It was highly controversial.

Rangel's fourth strategy was to make House Bill 588 a priority in order to overcome the hurdles that lay ahead for this legislation. To become law, the bill would have to pass through various parliamentary procedures and political obstacles. It was particularly subject to a tremendous time constraint. In Texas, the Constitution provides for biennial sessions, beginning in January of odd-numbered years. These sessions run for a maximum of 140 days. This schedule does not allow sufficient time for legislators to thoroughly consider each bill, and it is often the case that bills pushed by the legislative leadership receive most of the attention (Kraemer et al., 1996).

During the 75th Legislature, over 3,600 bills were filed in the Texas House of Representatives (House Research Organization, 1997c). As Chair of the House Higher Education Committee, Rangel decided to devote her time to House Bill 588. But it was not a decision she made easily since she had filed numerous bills addressing other aspects of higher education that her group of experts had identified as being at risk.

For example, one of those other bills dealt with the use of race in admissions policies. According to the *Hopwood* case, "the word race can still be used in certain instances where we can show that there is still present discrimination by our universities" said Rangel in an interview. But she was not optimistic about its success. In related testimony, Rangel had learned that it would be "very difficult to show that these universities are still exercising acts of discrimination as they existed in the past."

Another bill that Rangel had a particularly difficult time deciding to let languish was her indemnification bill. This bill would have indemnified university officials in the event they were sued for their participation in an admissions matter. Rangel recalled “we did not get that indemnification bill passed either” because she was told that present law “will indemnify its [the State’s] agent from any lawsuit”. But, we were concerned about students who are not agents of the State because students also serve on some admissions committees.” She said she was proud that she “got it passed on the House floor, but we just never got it on the Senate. So we said, okay, fine.”

Knowing the legislative process and understanding the influences of the political climate within the Legislature, she knew it was time for a new plan. There would not be enough time to continue fighting a battle on each bill. She had to restrategize. She met with her group of experts and told them “look, we’ve got too many bills. This is a very short session....we are going to have to give priority to the most important bill. In my opinion, the most important bill is 588.” And while she remained somewhat agreeable to fight for the other bills as well, she warned the group “there are sixty-some Republicans. All of us are Democrats. And all of them are going to say, hey, wait a minute, they [minority students] are going to come in and invade our universities. What’s going to happen to the spaces that our kids had?” So, again she emphasized, “let’s be realistic. We’ve got a chance for one bill. Which one are we going to go with?” In the end, the consensus was to focus all energies on House Bill 588.

Finally, Rangel’s fifth strategy was to exercise her power as Chair of the House Higher Education Committee. Before any piece of education legislation could be

considered by either chamber, it had to be passed out of both the House and Senate education committees. The Senate Education Committee was chaired by Senator Teel Bivins, a Republican from Amarillo. Rangel, as Chair of the House Higher Education Committee, recognized that both she and Chairman Bivins had ambitious legislative agendas; therefore, both had to work with one another since their bills had to pass out of each other's committees. Otherwise, a bill would never get the chance to be considered by the entire legislative body.

Exercising the power inherent in her position as Chair of the House Higher Education Committee proved to be one of her greatest resources, particularly in working with Bivins. A couple of staff members who observed Rangel closely during the session noted in an interview that while she was often perceived as a "sweet" person, she was, in reality, equally "tough." In an interview, another staff member recalled that while trying to work things out with Bivins, "she was very shrewd. She used her power as chair to leverage his support and did an excellent job of that." Bivins also acknowledged the power that Rangel held as Chair of the House Public Education Committee. In an interview, while discussing his relationship with Chairman Rangel, Chairman Bivins mentioned the times when he would depend on the "good graces" of his counterpart in the House. He stated that when:

there are some things that are real important to me that she may not like a whole lot, I will go over on bended knee and plead with her to pass my stuff. And there are some things that I may not like that much that I know she's interested in, so

that provides the basis for the cornerstone of democratic process, which is compromise.

This relationship ensured significant compromises from both chairs during the 75th Legislature. Regarding House Bill 588, Bivins said, “that wasn’t particularly the case here” because he knew that both Houses were working on a solution. He said, “it was something that I believe in, that I needed to do.”

However, Rangel became concerned when House Bill 588 failed to receive the immediate attention she thought it deserved when it first arrived in the Senate Education Committee. In fact, she felt the need to remind Bivins of whose bill he was failing to act on. In an interview, Rangel said: “I called him and I asked him if he would come to my office.” Once he arrived, she recalled being very firm with him. According to Rangel, they had the following discussion:

Senator...I drive a Jaguar, I have a very nice home, but my most valuable asset is my independence. And my independence is because of my education. I said, I’d like to see many students, minority students, be able to exercise their independence too. They can’t do it unless they get a good education. He stopped me right away: “Now wait a minute...I agree with you. I’m with you.” I said, why haven’t we had a hearing on our bill? So we are going to have a hearing on our bill? I said, well, good, because you know, I have a couple of your bills too. I’m sure you want a hearing. But students out there want that too.

Rangel said that Bivins assured her that House Bill 588 would received a public hearing in the Senate. Interestingly, while Rangel was pushing hard to have her bill heard in the Senate, she was “sitting on” Senate Bill 1419, which Senator Bivins had co-authored.

Commenting on whether Rangel was pressured by the Senate for holding up their bill, Terrell Smith, the governor’s legislative director said in an interview: “Probably. But if you’ve followed Irma at all over the years, she’s killed their bills right and left, and I think they’ve learned that pressuring her doesn’t do a whole lot of good.”

When asked in an interview whether she received any pressure from senators for holding back their bills, Rangel said, “nobody complained. I guess if they did, they knew it would be worthless anyway.”

Bivins and Smith both confirmed that Rangel took the position that House Bill 588 would be the response to *Hopwood*. Bivins commented that the, “Senate Bill passed and went over to the House. She substituted it with her bill...the bottom line was, hers was the vehicle.” Smith agreed. He noted:

I really think that as a result, they [senators] gave up. Actually, I was a little surprised at how easy they gave up on the 50-40-10 plan....I really thought we were going to have to go to battle. I thought it was going to be, us and Irma, against some of the senators, and then trying to get some compromise to do this or that.

Smith added, “I’m not sure about how she did it; the Senate just accepted her deal and took it without any changes at all, which in my opinion is rather unusual.”

Rangel also found herself having to rely on her position as Chair to maintain unity between minority groups. She said there was an African-American legislator who filed a similar bill. In an interview, Rangel said that:

Her number was higher than mine and I don't understand why she filed that.... I called this member in and I said: "You have the identical bill that I filed before you did. I'm not going to squabble over this because the students need all our votes."

Rangel also said that she told this legislator, "I'm going to sit on your bill. I'm not going to bring it up for a hearing. I will put your name as a co-author on my bill." Rangel added:

I put that member as a co-author, not co-sponsor, but a co-author of my bill, our bill—so that we would not divide ourselves. I knew that the students were going to need the votes of the African-Americans and every vote that we could. And I was not about to bring about any divisiveness amongst our votes.

Though a bill normally has one primary author, the House Rules permit a maximum of four additional joint authors, which then gives these members co-ownership of the bill. Rangel allowed four other House members to take such ownership.

In summary, the respondents identified the Chairman of the House Higher Education Committee, Irma Rangel, as the key legislative stakeholder. Not only did she author House Bill 588, but she successfully navigated its enactment. The evidence shows that she did this by exercising considerable leadership, managing conflict and building consensus while implementing numerous strategies to get through the complex rules and

the power structures that are a basic part of the legislative process. These strategies included: seeking the advice of experts in the field of higher education; involving the governor's office from the beginning of the process; keeping the bill simple; making House Bill 588 her priority; and exercising her power as Chair of the House Public Education Committee.

Not explicitly stated, but clearly important, was the fact that choosing the top 10 percent created an admissions system based on merit (i.e., high level student performance), which was an attractive element in the race-neutral debate. Also of interest was that inequality of school performance did not become an issue during the legislative discussions. Such discussions if highly visible might have proven awkward for legislators. Some would have had to claim that their schools were better than others in the State, giving their students perhaps an unfair advantage. Others with under-performing schools might have been put in the position of having to aggressively advocate for a better public school system in their districts. Most important, any discussion of these matters could have returned the legislature to the 1990's struggle when the Texas Supreme Court required that the State devise an equitable public school finance system. It took Texas legislators about five years to develop an acceptable plan (Texas Education Agency, 2001).

CHAPTER V

SUMMARY, INTERPRETATION, CONCLUSION, AND IMPLICATIONS

Summary of the Key Findings

Review of the legislative testimony, documents, and interview data confirms that the 75th Texas Legislature assumed an unprecedented role in higher education admissions policies. The data reveal that:

- The *Hopwood* ruling and Attorney General Morales' subsequent interpretation influenced the Texas legislature to respond to the issue of minority representation in higher education.
- Senator Gonzalo Barrientos initiated statewide discussions to address the affects of the ruling.
- Minority legislators perceived the anticipated affects of the *Hopwood* ruling to be negative and sought legislative redress.
- Four primary groups, identified as the major demand articulators, provided lawmakers with legislative input on the development of House Bill 588.
- Past controversy over affirmative action policies thrust lawmakers into a partisan debate over admissions legislation.
- Some concessions had to be made to facilitate the acceptance of House Bill 588.
- The three institutional forces within the Texas legislature that were instrumental in the success of the bill were: the initiative and leadership of

Chairman Irma Rangel, Chairman Teel Bivins' support, and the control held by Democrats in the House.

- The success of House Bill 588 was further dependent on the skillful utilization of five key strategic maneuvers by Rangel.
- Admitting the top 10 percent of each high school graduating class was an acceptable alternative to the traditional use of race in higher education admissions policies.

It is worth noting that House Bill 588 did not address admissions to professional schools except that entry into undergraduate institutions is the key step to success in admission to professional schools. Rangel understood this link and worked hard during the 75th Legislature to ensure that entry into higher education was accessible at the entry level—the undergraduate schools. In an interview, Rangel said that the *Hopwood* ruling was “going to affect everybody,” beginning at the undergraduate level. Therefore, House Bill 588 focused on the undergraduate level.

Interpretation of the Findings

In 1997, the Texas Legislature enacted House Bill 588 in its response to the *Hopwood* ruling that banned the use of affirmative action policies at The University of Texas School of Law. This legislation is an alternative to the traditional use of race in university admissions decisions. It guarantees automatic admission to state universities for the top 10 percent of each state high school graduating class.

This study focused on the actions of the 75th Legislature and was guided by Meranto's (1967) systems model that he created to identify the factors that lead to the passage of major legislation. The model was designed to show how these factors enter a political system as inputs and are then altered within the system to produce an output, or an innovative legislative solution to a societal problem. Meranto referred to his model as an *input-output* systems model.

Meranto (1967) used his model to examine a federal legislative issue, whereas this study examined the enactment of state legislation at a specific point in time. Meranto was able to identify the various factors that blocked previous attempts to enact legislation securing federal aid to education. His model guided this study in highlighting the factors that influenced the 75th Texas Legislature to produce a new output, House Bill 588.

This study identified multiple factors to explain the successful enactment of House Bill 588. Therefore, it is consistent with Meranto's (1967) finding, and observation that:

victory must be viewed in the context of several inextricably interrelated factors....it is not possible to rank them systematically in order of importance in any meaningful fashion. Indeed, it would be a mistake to attempt such a ranking since it would imply a simplified conception of the complex interaction among the factors that made the passage of the proposal possible. All are necessary to explain the outcome; no single variable is sufficient. (p. 131)

Following is an examination of the external and internal factors that influenced the passage of House Bill 588 and how they fit Meranto's model.

Conditions Outside the Texas Legislature

This study illustrated that three conditions outside the Texas Legislature influenced the 75th Legislature to address the issue of diversity in education. The three conditions were, the *Hopwood* ruling, former Attorney General Dan Morales' subsequent interpretation of the ruling, and the projected demographic changes in the population of Texas. These conditions helped to determine the environment in which the political system functioned and created input demands primarily through minority legislators, who anticipated the adverse affects of the *Hopwood* ruling on minority representation in higher education. The conditions also spawned "major demand articulators," the second subcategory of Meranto's (1967) model. Included were the four groups that provided legislators with various sources of legislative input: interest groups, private citizens/constituents, state agency legislative liaisons (university representatives), and political parties.

The *Hopwood* ruling created a new environment in which universities were banned from using race as a factor in admissions decisions. This new environment began taking shape in 1992 when four White students filed a lawsuit against The University of Texas School of Law claiming reverse discrimination. In 1994, a federal judge ruled that the specific guidelines employed by The University of Texas School of Law's admissions process—separately evaluating non minority and minority applicants—was unconstitutional, but held that affirmative action was still a valid principle to use in admissions. In 1995, the plaintiffs appealed. In 1996, a three-judge panel of the U.S. Fifth Circuit Court of Appeals ruled in favor of the plaintiffs and ordered the University

to revise its admissions policy. After some deliberation, the State appealed the decision to the U.S. Supreme Court. However, the Court voted to leave intact the federal appeals court ruling banning the use of race-based admissions policies at the law school, other than to remedy past cases of discrimination.

Confusion over the implementation of the ruling resulted in another new input factor: Morales' interpretation of the ruling. In 1996, he provided all state universities guidelines for establishing race-neutral policies in admissions and financial aid.

In their efforts to comply with the ruling and the State's interpretation, some institutions began to modify their admissions procedures by eliminating their race-based policies. Other universities pressed Morales for further clarification of the case; they sought guidance on how they could maintain a diverse student body in light of the new restrictions. In Letter Opinion No. 97-001, Morales (1997) responded by formalizing his previous position against the use of race-base institutional policies and added that this restriction applied to "admissions, financial aid, scholarships, fellowships, recruitment and retention, among others" (p. 24).

Given the guidelines, various campuses began reporting a drop in minority applications and admissions rates. Statistics on the first post-*Hopwood* freshman class showed a decline in admissions to the two major institutions of higher education in the State, The University of Texas at Austin and Texas A&M University. This concerned minority legislators because the drop was in direct contrast to the rising number of minority students in Texas.

Dr. Steve Murdock, chief demographer of the Texas State Data Center at Texas A&M University, had reported to the Legislature that the minority population would account for more than 50 percent of the total population of Texas by the year 2030. This projected demographic change proved to be a third critical input factor in the equation.

Fortunately for advocates of the “top 10 percent” proposal, one possible opponent to House Bill 588 was influenced by Murdock’s projections. Republican Senator Teel Bivins, Chairman of the Senate Education Committee, understood what Murdock was saying about the future implications of an undereducated student population. In an interview, Bivins acknowledged the impact of the demographic shifts on the State’s educational, cultural, and social structure, “[u]nless we on our watch are able to open up education to that sector of the population.”

Bivins’ support was a key component in the success of the bill, given the political climate that controlled the 75th Legislature. The 75th Legislature was elected in 1996 and produced the first Republican Senate majority.¹² The Senate had 17 Republicans and 14 Democrats. The House maintained a Democratic majority with 82 Democrats to 68 Republicans (Texas House Directory, 1997). The Republican governor, of course, held veto power. This posed a challenge for Democrats because the Republican Party in Texas tended to be strongly conservative, and conservatives were likely to oppose affirmative action policies (Kraemer et al., 1996). A local newspaper reporter observed

¹² “[B]y 1995 Texas was clearly a two-party state. Republicans held more than 1,000 offices statewide...[while] Democrats still held...17 of the 31 state Senate seats, [and] 89 of the 150 seats in the state House” (Kraemer et al., 1996, p. 143).

that “[m]inority lawmakers appear headed for a showdown with some Republican lawmakers over how to respond to the court ruling” (Brooks, 1997a, p. A1).

These input factors entered the legislative system through key minority legislative leaders who perceived the adverse affects of the *Hopwood* ruling. These leaders committed to finding a solution that would promote diversity in higher education, and worked with education interest groups, various private citizens and state agency legislative liaisons. For example, Senator Gonzalo Barrientos initiated statewide forums that at times included over 100 participants. Barrientos also invited State Representative Irma Rangel, Chair of the House Higher Education Committee, to join the discussions. Rangel’s participation helped focus the public support Barrientos had created. She organized smaller discussion groups in her Capitol office, which led to the drafting of House Bill 588.

Aroused public opinion and the resulting response by legislative leaders and others was sufficient to generate support for remedial legislation. This finding supports research by Schattschneider (1960) who found that, “conflict, competition, leadership, and organization are the essence of democratic politics. Inherent in the operations of a democracy are special conditions which permit large numbers of people to function” (p. 139). Schattschneider further asserts that “[a] popular decision bringing into focus the force of public support requires a tremendous effort to define the alternatives, to organize the discussion and mobilize opinion. The government and the political organizations are in the business of manufacturing this kind of alternatives” (p. 139).

Consequently, when the 75th Legislature convened, these converging input efforts resulted in the introduction of over 20 bills aimed at curtailing the anticipated adverse affects of the *Hopwood* ruling. These new proposals addressed various university admissions procedures, increased financial aid, parity studies, and indemnification for admissions officers. Though some of these bills were race-based, most were not. House Bill 588 was among the race-neutral legislation. The avoidance of race-based solutions was due to the strong Republican opposition to any legislation that was not race-neutral. Early in the session, the Chairman of the Senate Education Committee had made it clear that only race-neutral legislation would receive consideration in his committee.

Conditions Within the Texas Legislature

Meranto (1967) notes that the environmental conditions *may* appear to produce new policy outputs. But, he says: “External changes do not automatically bring about innovation in the system and in its policy outputs for the simple reason that the institutional structure of the system is rigged against producing change” (p. 110). Texas is a good example. To become law in Texas, a bill has several hurdles to overcome. A bill requires the approval of both the Senate and the House. It has to be read three separate times in each chamber. During the first reading, the bill is introduced and referred to the committee of the presiding officers’ recommendation. The second reading takes place after the bill has been heard and favorably reported back to the respective chamber. At that time, the bill is debated and could be amended by a majority vote prior to being passed to third reading. On third reading the bill is debated again and could be amended once more by a two-thirds vote prior to final passage (House Research

Organization, 1999). Upon final passage, the bill still must escape the governor's veto. For example, in 2001 the Texas Legislature enacted 1,601 bills and 20 joint resolutions after considering over 5,700 pieces of legislation. The governor vetoed 82 bills (House Research Organization, 2001).

Additional institutional factors affect legislative outcomes. In Texas, regular sessions are held biennially in odd-numbered years for 140 days. These short sessions do not allow legislators to study carefully each piece of legislation, which serves to heighten the power of the presiding officers (Kraemer et al., 1996). Significant for this study was the fact that neither Democratic Lieutenant Governor Bob Bullock, the presiding officer of the Texas Senate, nor Democratic Speaker Pete Laney, the presiding officer of the Texas House of Representatives, appear to have taken an official position on the development of House Bill 588. However, that does not mean that they did not play a critical role in the process. Their decision to play a passive role amounted to tacit acceptance, leaving the fate of the bill to efforts of other legislative leaders. This had a significant impact on the outcome of the bill because "the lieutenant governor and the speaker of the House have such sweeping procedural, organizational, administrative, and planning authority that [if they choose] they truly dominate the legislative scene" (Kraemer et al., 1996, p. 220).

The outcome of House Bill 588 was determined primarily by a group of key legislative leaders within the Texas Legislature that included committee chairs who were successful in their efforts to get the issue of minority representation in higher education

on the State's policy agenda. This was especially true in the House where Democrats held control.

Representative Irma Rangel was Chair of the House Higher Education Committee, which meant that House Bill 588 would receive favorable consideration in her committee. Once out of committee, the bill received favorable treatment by the Democrats in the House, who provided the majority vote needed to send the bill to the Senate. Advocates would also count on Senate passage of the bill because of the influence of Senator Bivins, Chair of the Senate Education Committee, who had a good working relationship with Rangel and understood the ramifications of an undereducated population. The combination of these conditions made it likely that a bill would be passed.

While there appeared to be no unified opposition to House Bill 588, the bill's enactment was not without conflict. In the committee hearings, testimony included demands for increasing the automatic admissions cap from 10 percent to 25 percent and adding a financial component. In other testimony, state agency legislative liaisons (university representatives) recommended changes because of the perceived affect of the legislation on their respective institutions. Some Republican legislators expressed concern that home-schooled students were being excluded from the automatic admissions provision of the bill. Others contended that students attending high performing high schools would be adversely affected by the bill because slots would indiscriminately be given to students from lower performing schools who were in the top 10 percent of their high school graduating class. While Rangel acknowledged the relevance of some of their

arguments, she remained steadfast in her commitment to provide students from *all* parts of Texas an equal opportunity to pursue a higher education.

Conservative-Republican influence in the legislature presented Rangel with a monumental task. Rising to the challenge, Rangel incorporated a series of strategies in building support for House Bill 588. First, she sought the advice of prominent leaders in public discussions of ways to remedy the affects of the *Hopwood* ruling and had them assist in drafting the bill. This is consistent with the findings by Keefe et al. (1986) that legislators customarily seek the input of lobbyists. Rangel sought the advice of educational interest groups and professionals in the area of higher education, although most were not registered lobbyists. Second, she included the governor's office throughout the entire process to ensure that the governor would support the bill. Third, she drafted a bill that was simple to understand and simple to implement. Fourth, she made House Bill 588 her legislative priority. Though she had introduced various bills addressing other effects of the *Hopwood* ruling, the time constraints of a legislative session, in conjunction with the different stages that a bill must go through to become law, would not allow her to devote adequate time to the other bills. Finally, she effectively utilized her power as Chair of the House Higher Education Committee in leveraging the support of Chairman Bivins and her other colleagues. These strategies increased the acceptability of the bill and led to its success.

How significant was the House Democratic vote and party affiliation in the passage of the bill? The roll-call vote was reflective of the House members' party affiliations and clearly indicated that the Democratic vote helped secure the passage of

House Bill 588 in the Texas House of Representatives. During the second reading of the bill, 72 of the 78 Democratic members present voted in support of the bill—five opposed the bill, one was present but not voting, and four were absent. Of the 68 Republican members, only five voted for the bill. A recorded vote was not available on third reading. However, the Democratic majority secured the bill’s final passage in the House.

In an interview, Rangel said that perhaps Republicans voted against the bill “because they say it as another affirmative action program.” The Republican vote was consistent with findings in the literature that a conservative ideology opposes government policies that promote affirmative action (Kraemer et al., 1996). Likewise, Democratic legislators, most of whom were liberal, demonstrated strong and almost unified support for the bill because it would accomplish their goal, which was to ensure equal access to higher education.

The study did not uncover any systematic evidence of election district (voters) influence on the legislators of the 75th Legislature and their votes on House Bill 588. Nor was it feasible to conduct a detailed analysis to explain individual votes on House Bill 588, primarily because there was a lack of data on the composition of each district.

Some evidence was found to support Meranto’s (1967) suggestion that voting behavior may be explained, in part, by a legislator’s “perception of his constituency’s attitudes on the question” (p. 42). Such behavior was evident during the House floor debate. One Republican legislator asked his fellow colleagues to consider how this bill would affect their district and their constituency. Another Republican legislator opposed the bill because of what he perceived to be the effect of the bill on the top performing

schools in his district. A third Republican legislator expressed opposition because the bill excluded home-schooled students, whom he considered an important part of his constituency. A similar behavior was found among the African-American and Mexican-American legislators who voted for House Bill 588 because they represented constituencies with a majority of minority voters that would benefit from the bill. While all African-American legislators voted for the bill, the only Mexican-American legislator who did not vote for the bill was Republican and had a district with an 8.9 percent Hispanic population (Mexican American Legislative Caucus Directory, 1997).

Tenure appeared to be insignificant in a legislator's vote on House Bill 588. Consistent with Davidson's (1969) research, legislators with low seniority were more likely to vote the party line. While some legislators with greater seniority did not follow party preference, most did vote along party lines. This second finding neither confirms or rejects Davidson's research.

Turner and Schneier (1970) say that legislators are interested in re-election, and their vote reflects the preferences of their constituents and their political party. The findings of this study are not inconsistent with their prediction.

It was not evident that gender had any impact on the House vote. For both men and women, party was the primary determinant of their vote.

The influence of ethnicity on the vote was evident. All Democratic African-American and most Mexican-American legislators voted for the bill. Only one minority member was Republican, a Republican Mexican-American. This legislator's vote on the House floor was similar to that of fellow party members. However, in committee, as a

member of the House Higher Education Committee, this legislator supported the bill in order to enable it to reach the floor with the expectation that it would pass. As might be expected, the vote of the members of the two minority caucuses, the Texas Legislative Black Caucus and the Mexican American Legislative Caucus, was similar to that of the ethnic minority vote mentioned above. All members of the Texas Legislative Black Caucus supported the bill and the majority of the Mexican American Legislative Caucus members supported the bill. It is also important to note that the 41 Democratic minority legislators composed over 50 percent of the Democratic vote in support of House Bill 588. Since the overwhelming majority of Democrats and Republicans voted along party lines, the data suggest that party affiliation was a principal influence in the vote on House Bill 588 for most legislators.

Contrary to the division vote in the House that was primarily along party lines, the Senate passed the bill on second reading by a 27-4 vote. On third reading, the bill passed by a similar vote. Considering that the Senate had already debated and passed Senate Bill 1419, a three-tiered bill also aimed at promoting diversity in higher education, it is not too surprising that House Bill 588 moved through the Senate process in record time.

House Bill 588 was received by the Senate on April 17, 1997 and scheduled for a public hearing in the Senate Education Committee on April 30, 1997. It was reported out favorably without amendments. On May 8, the bill had its second and third reading and passed by a majority vote of the full Senate. It was sent to the governor, who signed the bill on May 20. The bill became effective September 1, 1997.

The road to success for House Bill 588 in the Senate was prepared by Senate Bill 1419, co-authored by African-American Senator Royce West, Mexican-American Senator Gonzalo Barrientos, and Senator Teel Bivins. Efforts to win support for Senate Bill 1419 in the Senate settled controversial issues such as funding and the race-neutral language. These efforts along with extensive negotiations and compromises led to the acceptance of Senate Bill 1419, which was then sent over to the House.

The Senate bill, however, was not to prevail in the House for several reasons. The House bill was filed earlier, in January, about two months before the Senate bill. In addition, the House bill provisions were simpler and won support more easily. Rangel was also crucial to the success of House Bill 588. She had secured support from the key legislative leaders in both chambers. In addition, she got a commitment that the governor would not veto the bill. Finally, as Chair of the House Education Committee, she effectively made the case that the Senate version was less desirable, and her Senate colleagues did not challenge her on this. Rather, during the Senate committee hearing, House Bill 588 was described by Barrientos, the bill's Senate sponsor, as a "kinder and gentler" bill than its Senate cousin.

Senator Bivins also contributed to the Senate's adoption of House Bill 588. While keeping firm to his position of race-neutral legislation, Bivins, as Chairman of the Senate Education Committee and as a member of the Republican Party, provided the essential leadership to remind his colleagues that the State of Texas had a responsibility to address the issue of diversity in higher education. He sat down with legislators upset over the loss of affirmative action and was able to keep the focus on a solution that would

appease not only the legislative membership, but also the courts. He also provided a cooperative environment for House Bill 588 while it was under consideration in his committee. Most important, he utilized his knowledge of the Senate rules and called a point of order on an unfriendly amendment that was certain to defeat the bill on the Senate floor.

Finally, Terrell Smith, a former legislator and the governor's legislative director during the 75th Legislature, indicated that senators were more likely to vote for House Bill 588 because of the larger size of their legislative districts. In an interview, he said that Senators have districts with "not just more minorities perhaps, but poor school districts, rich school districts, small school districts, big school districts, and they [senators] tend to come to the legislature feeling that all of those need to be represented." Texas is divided into 31 state Senate districts and 150 state House districts. The boundaries are defined using population and census data reported every 10 years. Senate districts were estimated to have had populations of approximately 552,000, whereas House districts had populations of approximately 114,100 (Texas Legislative Council, 1990).

Final Output

House Bill 588 became effective on September 1, 1997. It established a uniform admission and reporting process to be followed by the state's colleges and universities when considering admission of first-time freshman students. Three major provisions were included in the bill:

- automatic admission for high school students graduating in the top 10 percent of their class;
- optional automatic admission for students in the top 25 percent of high school graduating classes; and
- 18 socioeconomic factors that can be used for admitting students who did not qualify under the top 10 or 25 percent rules.

Conclusion

After the *Hopwood* ruling banned the use of race-based policies in higher education, the Texas Legislature responded by enacting legislation to create new criteria for admission policies in order to maintain diversity at the state's colleges and universities. That bill was House Bill 588. It guarantees automatic admission to public colleges and universities for students who rank in the top 10 percent of their high school graduating class.

This study focused on identifying the factors that contributed to the passage of the bill—the external factors that impinged upon the legislature and the factors within the legislative process that facilitated its final passage. Meranto's (1967) *input-output* model was used to organize the significant factors. Although the entire Texas Legislature was the original unit of analysis for this study, the analysis focused mostly on the actions of the Texas House of Representatives because evidence indicated that the passage of House Bill 588 was best explained by the conditions influencing the House. House action ultimately determined the outcomes of the Senate.

Regarding input factors, several conditions outside the Texas Legislature were identified. These included: the *Hopwood* ruling, Attorney General Morales' interpretation of the ruling, and projected demographic changes for Texas.

Minority legislators who perceived an adverse affect of the *Hopwood* ruling on their constituencies sought a legislative solution to this new problem. The data identified Mexican-American Senator Gonzalo Barrientos as the key legislative stakeholder who initiated statewide discussions. These meetings served to arouse public opinion and support for remedial legislation. Four major demand articulators that provided legislators with legislative input in the development of House Bill 588 were also identified. They were interest groups, private citizens/constituents, state agency legislative liaisons, and political parties. The findings of the study supported Meranto's (1967) suggestion that a legislative system is responsive to conditions existing in its environment which have been converted to political demands either by members of the system or by demand articulators.

The input demands made by these various groups resulted in the filing of over 20 pieces of legislation. Each piece of legislation intended to curtail some adverse aspect of the *Hopwood* ruling. These adverse aspects could be grouped into of four major areas: university admissions, financial aid for scholarships and recruitment and retention programs, indemnification protection for admissions officers and need for parity studies.

A combination of factors occurring during the legislative session presented a challenge in developing legislation that would be acceptable to everyone. The 75th Legislature convened with a new Republican-controlled Senate and a Republican

governor. Republican Senator Teel Bivins, Chairman of the Senate Education Committee, had made it clear that only race-neutral legislation would be considered in his committee. And past controversy over affirmative action policies thrust lawmakers into a partisan debate over admissions legislation.

Conditions within the Texas Legislature that favored final passage of House Bill 588 were: Chairman Irma Rangel's initiative and leadership; Chairman Teel Bivins' support; and the control of the House held by Democrats. The success of House Bill 588 was further secured through the skillful utilization of five key strategic maneuvers implemented by Rangel. These strategies included: seeking the advice of prominent leaders in the field of higher education; involving the governor's office from the beginning of the process; keeping the bill simple; making House Bill 588 her priority; and exercising her power as Chair of the House Public Education Committee. In sum, by the end of the session, admitting the top 10 percent of each state high school graduating class was an acceptable alternative to the traditional use of race in higher education admissions policies.

Implications of the Study

Implications for Future Research

The findings of this study suggest various areas for further research. First, since the automatic admission of the top 10 percent of graduating classes is the principle provision of House Bill 588, there is a need for research to determine whether the plan will ensure a diverse student body at state colleges and universities. A comparative

analysis of schools in Texas and of Texas and other states would help determine its effectiveness. The effectiveness of the top 10 percent plan should also be examined in states with integrated student populations where it is less likely to increase the number of minority students in the most selective colleges and universities. Additionally, a longitudinal study is needed to examine whether enrollment and retention levels are in proportion to each state's demographic composition. This information could contain critical implications for each state's educational and economic health.

Second, after admitting the top 10 percent of high school graduating classes, House Bill 588 permits schools to consider other applicants on the basis of various socioeconomic factors. Factors such as family poverty level, parents' education level, a school district's financial status, residence in a rural or urban area, among others, were determined as having significant affects on the diversity of the student populations in Texas. Further research would show how these factors have hindered or helped in promoting diversity in Texas higher education. Special attention should be given to those factors that have the most profound influence on policy outcomes. The applicability of these factors to other states is also a critical area for analysis.

Third, additional and continuing research needs to be conducted on the application of Meranto's (1967) model to other legislative systems which confronted issues of race and admissions policies in higher education. For example, California and Florida confronted challenges similar to those of Texas. It would be useful to know if their legislative experiences were similar to those of Texas.

Fourth, study of how well the Texas Legislature's experience fit other theoretical models—other than Meranto's (1967) model that was a derivative of the systems approach—would add significantly to the literature on legislative policymaking. Similarly, comparative studies of other states legislatures would indicate how generally applicable these models are to legislative decision making.

Fifth, as other states are forced to address the issue of race-neutral legislation, there is a need to explore other than legislative solutions. Some work needs to be done to determine whether state education bureaucracies have implemented their own policies or played significant roles in influencing legislators. This is particularly important since little attention has been given to the identification and participation of these educational entities, and they are oftentimes held responsible for ensuring educational equity. Further research would determine how solutions proposed by education bureaucracies are similar or dissimilar to legislative solutions, which solutions are more successful in achieving policy goals, and whether or not the outcomes vary by state.

Sixth, given the conditions within the 75th Legislature, there is a need for comparative case studies of legislative policymaking to examine whether different conditions would cause different outcomes. Much can be learned from studies of states like California and Florida that have recently enacted similar legislation. Examining whether or not these legislatures had key legislative stakeholders championing their admissions policy and whether or not they used different strategies would provide greater insight into legislative theory.

Seventh, few studies have been conducted on the influence of minority legislators on shaping policy outcomes. This study suggests the need to identify the factors (e.g., institutions, history, culture, etc.) that have helped to determine minority legislators' effectiveness in influencing legislative outcomes, and whether or not they vary from state to state. More attention needs to be given to determining if minority legislators from different states behave in different ways, particularly in handling similar issues. Furthermore, work needs to be done to determine how the number of minority members in the legislature (less or more than in Texas) influences their behavior when dealing with similar issues. Additionally, some attention should be given to key legislative positions held by minorities to determine if, without those positions, legislation such as minority access to higher education would receive legislative approval.

Eighth, this study demonstrated that political parties have a significant affect on legislative outcomes. Particularly important for this study was that Republicans dominated the political climate in 1997, while the 75th Legislature was split between a Republican Senate and Democratic House. In Texas the Republican party tends to be strongly conservative, often favoring the less-government approach and opposing affirmative action programs. More research needs to be conducted on the affects of political parties on policy issues addressing educational opportunity. For instance, what happens in more traditional Republican settings versus liberal Republican settings versus Democratic settings? What outcomes can be expected in a weak party versus strong party states? A comparative analysis between strong governor versus weak governor states should also be considered.

Finally, to what extent have court rulings prompted legislative reaction to correct what the legislature perceived as an undesirable public policy? Significant contributions to policymaking theory can be made by comparative studies analyzing the similarities and differences between legislative reactions. One question to be addressed is whether there are characteristics of state court systems and legislatures that could be used to predict behavioral patterns of judges and legislatures on higher education issues.

Implications for Policy Makers

This study provides significant findings for policy makers interested in the area of educational public policy. One finding indicates that minority legislators were found to be a natural constituency when creating public policy supporting equal educational opportunity. Another finding revealed that, in the early stages of forming effective educational policy, it is useful to sponsor public forums to identify potential opinion leaders and to elicit ideas from them about acceptable solutions.

The findings also suggest two noteworthy points for policy makers working on controversial issues. First, most proposed legislation can be expected to have multiple sources of opposition. As a bill becomes more complex, the potential sources of opposition multiply. Thus, legislation is more likely to be successful if it is simple, and if potential opponents are anticipated and satisfied early in the legislative process. Second, since an opponent can stop a bill at any point in the process, it is essential to secure support for the bill at every major juncture of the process. Therefore, policy makers would be well advised to test the political waters before proposing legislative solutions and again at key points in the legislative process.

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